TRANSCRIPT.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1892.

JOHN H. REAGAN, W. P. McLEAN, L. L. FOSTER, AND C. A. CULBERSON, APPELLANTS,

v.

THE FARMERS' LOAN AND TRUST COMPANY AND THE INTERNATIONAL AND GREAT NORTHERN RAILWAY COMPANY, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

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MARCH 28, 1893.

BE IT REMEMBERED, That there was opened and begun to be holden a regular term of the United States Circuit Court of Fifth Circuit and Western District of Texas, at the city of Austin in said Circuit and District, on the 6th day of February, 1893, it being the first Monday in February, and the day fixed by law for commencing a regular term of said court at said place.

PRESIDENT:

The Hon. Andrew P. McCormick, one of the Circuit Judges of the United States for the Fifth Circuit;

A. J. Evans, United States Attorney for said District;

Paul Fricke, United States Marshal for said District; and

B. G. Duval, Clerk of said Court.

When and where the following proceedings were had, to-wit:

IN THE

CIRCUIT COURT OF THE UNITED STATES,

For the Western District of Texas.

IN THE FIFTH CIRCUIT. IN EQUITY. No. 187.

THE FARMERS' LOAN & TRUST COMPANY, TRUSTEE, COMPLAINANT,

Against

THE INTERNATIONAL & GREAT NORTHERN RAILROAD COMPANY, THOMAS M. CAMPBELL, JOHN H. REAGAN ET ALS., DEFENDANTS.

BILL OF COMPLAINT.

TURNER, MCCLURE & ROLSTON,
22 William Street, New York.
FARRAR, JONES & KRUTTSCHNITT,
33 Carondelet Street, New Orleans, La.
WEST & MCGOWN,
Austin, Texas.
Complainant's Solicitors.

HERBERT B. TURNER,
JOHN F. DILLON,
JOHN J. McCOOK,
E. B. KRUTTSCHNITT,
Of Counsel.

Filed April 30, 1892.
[Signed.]

B. G. DUVAL, Clerk,
By D. H. HART, Deputy.

To the Judges of the Circuit Court of the United States, for the Western District of Texas, in the Fifth Circuit, sitting in equity.

THE FARMERS' LOAN AND TRUST COMPANY, a corporation organized and existing under the laws of the State of New York, brings this, its bill of complaint, against the International and Great Northern Railroad Company, a corporation organized and existing under the laws of the State of Texas, and a citizen and resident of said State of Texas; Thomas M. Campbell, a citizen and resident of said State of Texas; John. H. Reagan, William P. McLean and L. L. Foster, citizens and residents of the State of Texas, constituting the Railroad Commission of Texas, organized under an Act of the Legislature of the State of Texas, approved April 3, 1891, and Charles A. Culberson, a citizen and resident of the State of Texas, and Attorney-General of said State:

And thereupon humbly complaining, your Orator, The Farmers' Loan and Trust Company, shows unto your Honors as follows:

FIRST. Your Orator is a corporation organized and existing under the laws of the State of New York, and a citizen and resident of said State; the defendant, The International and Great Northern Railroad Company, is a corporation organized and existing under the laws of the State of Texas, and is a citizen and resident of the said State and is an inhabitant of the Western District thereof; said defendant Campbell is a citizen and resident of said State and an inhabitant of said District; the defendant, John H. Reagan, William P. McLean and L. L. Foster are citizens and residents of the

State of Texas, and constitute the Railroad Commission of Texas, and they derive any and all power, authority and character as such Commission, and in respect to the matters hereinafter complained of, from and under an Act of the Legislature of the State of Texas, approved April 3, 1891, entitled, "An act to establish a Railroad Commission for the State of Texas, whereby discrimination and extortion in railroad charges may be prevented, and reasonable freight and passenger tariffs may be established; to prescribe and authorize the making of rules and regulations to govern the Commission and the railroads, and afford railroad companies and other parties adequate remedies; to prescribe penalties for the violation of this act and to provide means and rules for its enforcement." A copy of said act, marked "Exhibit B," is filed herewith as part hereof.

That said act fixes and establishes the office of said Railroad Commission of Texas, at the city of Austin, in the county of Travis, in said State of Texas; and said Commission, and said Reagan, McLean and Foster as such Commissioners, are residents and inhabitants of said Travis county, and of the Western District of said State of Texas.

That the defendant, Charles A. Culberson, is a citizen and resident of the State of Texas, and of the said city of Austin and county of Travis in said State, and an inhabitant of the Western District, and is the Attorney-General of said State, and claims as such Attorney-General the right to exercise the powers and to perform the duties purporting to be conferred and imposed upon the Attorney-General of said State by said Act of the Legislature of the State of Texas last hereinabove referred to.

SECOND. That the defendant, the International and Great Northern Railroad Company, owns a line of railroad and property within the State of Texas (which said lines of railroad are now in possesston of and operated by the defendant Campbell as Receiver as hereinafter set forth) described as follows:

(1) A line from Longview to Houston, a distance of about 232 miles.

(2) A line from Palestine to Laredo, a distance of about 415 miles.

(3) A line from Houston to Columbia, a distance of about 50 miles, known as the Columbia Branch.

(4) A line from Phelps to Huntsville, a distance of about 8 miles, known as the Huntsville Branch.

(5) A line from Troup to Mineola, a distance of about 44 miles, known as the Mineola Branch.

(6 A line from Georgetown to Round Rock, a distance of about 10 miles, known as the Georgetown Railroad.

(7) A line from Henderson to Overton, a distance of about 16 miles, known as the Henderson and Overton Railroad.

It also leases a line of railroad from Houston to Galveston, a distance of about 50 miles, known as the Galveston, Houston and Henderson Railroad.

The said defendant Railroad Company, therefore, owns and leases about 825 miles of railroad in all, together with the franchises, property and appurtenances thereof connected therewith, or thereto appertaining, all of which are more particularly described in the deed of trust or mortgage of the said defendant Railroad Company, copy whereof is filed herewith as part hereof, marked Exhibit "A."

THIRD. That under and in pursuance of the powers conferred upon said defendant Railroad Company by its charter and the laws of the State of Texas, and pursuant to due corporate action, the said defendant Railway Company did, on or about the 15th day of June, 1881, and at various dates thereafter, make, execute and for full value issue and deliver to various persons, its bonds known as its Second Mortgage bonds, each dated on said 15th day of June, 1881, said bonds being issued in denominations of one thousand dollars and five hundred dollars, to an amount in the aggregate of seven million and fifty-four thousand dollars ($7,054,000), all of said bonds being payable in gold coin of the United States on the first day of September, 1909, and bearing interest at the rate of six per cent. per annum, from the first day of March, 1881, payable in like gold coin on the first days of March and September in each year.

And for the purpose of securing said bonds, said defendant Railroad Company, pursuant to and in accordance with like charter and corporate authority, made, executed and delivered to your Orator as Trustee, its indenture of mortgage or deed of trust, bearing date on said 15th day of June, 1881, known as its Second Mortgage, conveying

and transferring to your Orator, in trust for the security of the holders of said Second Mortgage Bonds, all the lines of railroad, property, appurtenances, rights and franchises hereinbefore referred to, together with all the tolls, fares, freights, rents, incomes, issues and profits thereof, all of which are more specifically described in said mortgage, copy whereof, including a copy of one of said bonds, uniform with all others of like issue, except in respect to amount and number, is filed herewith as aforesaid, marked Exhibit "A."

FOURTH. That said Second Mortgage to your Orator, as Trustee, and the lien thereof, are as your Orator is informed and believes subordinate and inferior to the liens and mortgages securing the payment of the principal and interest upon the following described indebtedness of said defendant Company, to-wit:

(1) Seven million nine hundred and fifty-four thousand dollars ($7,954,000) of the bonds of the said Railroad Company, known as its First Mortgage Bonds, dated the first day of November, 1879, maturing on the first day of November, 1919, bearing interest at the rate of six per cent. per annum, the payment of the principal and interest whereof is secured by a First Mortgage made, executed and delivered by said Railroad Company to John S. Kennedy and Samuel Sloan, both of the city of New York, Trustees, covering the lines of railroad and property, then owned or thereafter acquired, hereinbefore described, and described more fully in said Second Mortgage filed herewith as Exhibit "A."

(2) Eighty-five thousand five hundred dollars ($85,500) of the bonds of said Railroad Company, known as its Second Mortgage Income Bonds, dated November 1, 1879, bearing interest at the rate of eight per cent. per annum, the payment of principal and interest whereof is secured by an Income and Second Mortgage, dated on said first day of November, 1879, made, executed and delivered by said Railroad Company to Samuel Thorne, William Walter Phelps and John S. Barnes, Trustees, covering the above described railroad and property of said defendant Railroad Company.

That all of the indebtedness and obligations of the said defendant Railroad Company hereinabove stated, are outstanding, except that eighty-five thousand five hundred dollars ($85,500) of the Second Mortgage Bonds of the

said Company secured by said Second Mortgage to your Orator as Trustee, are deposited with and held by your Orator to retire said eighty-five thousand five hundred dollars of the Income and Second Mortgage Bonds of November 1, 1879, secured by said mortgage of that date to Thorne, Phelps and Barnes, as Trustees.

FIFTH. That on or about the sixteenth day of February, 1889, T. R. Bonner and N. W. Finley were, by the District Court of Smith county, in the State of Texas, appointed Receivers of the said lines of railroad and property of the defendant Railroad Company in a cause No 3123, then and ever since pending in said court, wherein Jay Gould was and is plaintiff, and the International and Great Northern Railroad Company was and is defendant. That, thereafter, and on or about the eleventh day of March, 1889, N. W. Finley, one of said Receivers, resigned his office as such, and said District Court of Smith county, Texas, appointed J. M. Eddy as such co-receiver in his place and stead. That thereafter, and on or about the 12th day of January, 1891, said J. M. Eddy, one of said Receivers, departed this life, and Thomas M. Campbell was, by order entered in said cause on the 17th day of January, 1891, appointed by said District Court of Smith county, Texas, as co-receiver in the place of said Eddy, deceased. That thereafter, and on or about the 29th day of August, 1891, said T. R. Bonner, one of said Receivers, departed this life. That since said last mentioned date, said T. M. Cambell has been and he now is sole Receiver of the said lines of railroad and property of the defendant Railroad Company, and as such Receiver is in possession and engaged in the operation thereof.

Your Orator prays leave upon the hearing herein to refer to each and all of the orders of said District Court of Smith county in the above stated cause therein pending, and to the record thereof.

SIXTH. Your Orator further says that the Twenty-second Legislature of the State of Texas passed an act entitled "An act to establish a Railroad Commission for the State of Texas, whereby discrimination and extortion in railroad charges may be prevented and reasonable freight and passenger tariffs may be established; to prescribe and authorize the making of rules and regulations to govern the Commission and the railroads and afford

railroad companies and other parties adequate remedies; to prescribe penalties for the violation of this act and to provide means and rules for its enforcement," which said act was approved April the 3d, 1891, from which date it took effect. A copy of said Act of the Legislature of the State of Texas last mentioned, marked "Exhibit B," is herewith filed. That the said act was passed and adopted by said Legislature in claimed pursuance of the powers conferred upon said Legislature by an amendment to the present Constitution of the State of Texas, which amendment was adopted at an election held throughout said State on the 5th day of November, 1890, and said amendment is as follows:

"ARTICLE 2. Railroads heretofore constructed or which may hereafter be constructed in this State, are hereby declared public highways and railroad companies common carriers. The Legislature shall pass laws to regulate railroad freight and passenger tariffs, to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State, and enforce the same by adequate penalties; and to the further accomplishment of these objects and purposes may provide and establish all requisite means and agencies, invested with such powers as may be deemed adequate and advisable."

That the said Reagan, McLean and Foster were appointed and qualified as such Commissioners in the manner prescribed by Section 1st of said act, and organized said Commission on the 10th day of June, 1891, from which date they have assumed to be and act as the Railroad Commission of Texas, and are exercising, and claiming the right to exercise, the power and functions conferred, or purporting to be conferred, by said act upon said Railroad Commission. That said act purports to confer the power and authority upon said Railroad Commission of Texas and make it the duty of the Commission, among other things, to adopt all necessary rates, charges and regulations to govern and regulate railroad freight and passenger tariffs, the power to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs upon the railroads in said State, and to enforce the same by having penalties inflicted as by said act prescribed through the proper courts having jurisdiction. To fairly and justly classify

and subdivide all freight and property, of whatsoever character that may be transported over the railroads in said State into such general and special classes or subdivisions as may be found necessary and expedient. To fix to each class or subdivision of freight a reasonable rate for each railroad, subject to said act for the transportation of each of said classes and subdivisions. To fix different rates for different railroads, and for different lines under the same management, or for different parts of the same line, if found necessary to do justice. To fix and establish for all or any connecting lines of railroad in said State reasonable joint rates or freight charges for the various classes of freight and cars that may pass over two or more lines of such railroad, and if any two or more connecting railroads shall fail to agree upon a fair and just division of the charges arising through the transportation of freight, passengers or cars over their lines, the Commission is required by said act to fix the *pro rata* part of such charges to be received by each of said connecting lines.

Said act also provides in effect that until the Commission shall make the classifications and schedules of rates therein provided for, and afterwards if they deem it advisable, they may make partial or special classifications for all or any of the railroads subject to said act, and fix rates to be charged by such roads therefor, and such classification and rates shall be put in effect in the manner provided for general classifications and schedules of rates. And the said act provides that the said Commission shall have power, and it shall be its duty from time to time, to alter, change, amend or abolish any classification or rate established by it when deemed necessary, and such amended, altered or new classification or rates shall be put into effect in the same manner as the original. And the said Commission is authorized by said act to adopt and enforce such rules, regulations and modes of procedure as it may deem proper, and to hear and determine cemplaints that may be made against the classification, or the rates, rules, regulations and determinations of the Commission.

Said act also purports and attempts to confer upon the Commission the power to make reasonable and just rates and charges for each railroad subject to said act for the use or transportation of loaded or empty cars on its road,

and to establish for each railroad, or for all railroads, the like reasonable rates for the storing and handling of freight and for the use of cars not unloaded at forty-eight hours' notice to the consignee, not to include Sundays. And the said act also purports to confer upon the Commission the power, and to make it the duty of said Commission, to establish reasonable rates for the transportation of passengers over each or all of the railroads subject thereto, not to exceed the rates fixed by law, and also to prescribe reasonable rates, tolls or charges for all other services performed by any railroad subject thereto.

Said act, in effect, provides (Section 4) that, before any rates shall be established under said act, the Commission shall give the railroad company to be affected thereby ten days' notice of the time and place when and where the rates shall be fixed, and the said railroad company shall be entitled to be heard at such time and place, to the end that justice may be done, and that it shall have process to enforce the attendance of its witnesses, which process shall be served as in civil cases.

Sections 5, 6 and 7 of said act are as follows:

"SEC. 5. In all actions between private parties and railway companies brought under this law, the rates, charges, orders, rules, regulations and classifications prescribed by said Commission before the institution of such action shall be held conclusive, and deemed and accepted to be reasonable, fair and just, and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for that purpose in the manner prescribed by Sections 6 and 7 hereof.

"SEC. 6. If any railroad or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the Commission, such dissatisfied company or party may file a petition setting forth the particular cause or causes of objection to such decision, act, rate, rule, charge, classification, or order, or to either or all of them, in a court of competent jurisdiction in Travis county, Texas, against said Commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil causes in said court. Either party to said action may appeal to the Appellate Court having jurisdiction of

said cause, and said appeal shall be at once returnable to said Appellate Court at either of its terms, and such action so appealed shall have precedence in said Appellate Court of all causes of a different character therein pending: Provided, that if the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days' notice.

"SEC. 7. In all trials under the foregoing section the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to it or them."

By Section 8 of said act it is made the duty of the said Commission so soon as the classification and schedule of rates provided for in said act are prepared by them, to furnish each railroad subject to the provisions of said act with a complete schedule in suitable form showing the classification of freight made by them and the rates fixed by said Commission to be charged by such roads for the transportation of each class of freight and cause a certified copy of such classification and schedule of rates to be delivered to each of said railroads at its principal office in said State, if it has such office in said State, and if not, then to any agent of said company, which said schedule, rules and regulations shall take effect at the date which may be fixed by said Commission not less than twenty days, and it is by said act made the duty of said railroad company to cause said schedules to be printed in type of a size not less than pica and to have the same posted in a conspicuous place at each of its depots so as to be inspected by the public. And the said Commission by said act are empowered to at any time abolish, alter or in any manner amend the said schedules, or abolish or amend any such regulations, and, in that event, certified copies of the schedules, rules or regulations showing the change therein shall be delivered to each road as therein specified.

Neither said act nor any other law of the State of Texas requires said Commission to publish schedules and rates specified in said act before the taking effect of the same, or to do any other act or thing in respect thereto, except as required by Section 8 of said act hereinbefore recited.

It is provided in Section 14 of said act, in effect, that if any railroad company subject to said act, or its agent or officer, shall thereafter charge, collect, demand or receive from any person, company, firm or corporation, a greater rate charged for compensation than that fixed and established by the Railroad Commission for the transportation of freight, passengers or cars or for the use of any car on the line of its railroad, or any line operated by it, or for receiving, forwarding, handling or storing any such freight or cars for any other service performed or to be performed by it, such railroad company and its agent or officer shall be deemed guilty of extortion, and shall forfeit and pay to the State of Texas a sum not less than $100 nor more than $5,000.

By Section 17 of said act, it is provided, in effect, that in case any railroad subject to said act shall do or cause to be done, or permit to be done any matter, act or thing in said act prohibited or declared to be unlawful, or shall omit to do any act, matter or thing therein required to be done by it, such railroad shall be liable to the person or persons, firm or corporation injured thereby, for the damages sustained in consequence of such violation: and in case said railroad company shall be guilty of extortion or dicrimination as by said act defined, then in addition to such damages such railroad shall pay to the persons, firm or corporation injured thereby a penalty of not less than $125 nor more than $500, to be recovered in any court of competent jurisdiction in any county into or through which any railroad may run, provided that such road may show and prove, as a defense to the action for such penalty, that such violation was unintentional and innocently made through mistake of fact, and provided further that such recovery as therein provided shall in no manner affect a recovery by the State of the penalty denounced for such violation.

By Section 18 of said act it is in effect provided that if any railroad as aforesaid shall wilfully fail in either provisions of said act or shall do any act therein prohibited, or shall fail or refuse to do any other duty enjoined upon it for which a penalty has not therein been provided for such act or violation, it shall pay to the State of Texas a penalty of not more than $5000.

By Section 19 of such act it is provided in effect that all of the penalties therein provided, except as provided

in Section 17, shall be recovered and suits thereon shall be brought in the name of the State of Texas in the proper court having jurisdiction thereof in Travis County, or in any county from or through which such railroad may run, by the Attorney-General or under his direction.

By Section 20 of said act it is provided in effect that on the application of any person, organization or firm the Commission shall furnish certified copies of any classifications, rates, rules, regulations or orders, and such certified copies or printed copies published by authority of the Commission, shall be admissible in evidence in any suit and sufficient to establish the fact that any charge, rate, rule, order or classification therein contained and which may be in issue in the trial is the official act of the Commission.

SEVENTH. Your Orator further avers upon information and belief, that on or about the 21st day of June, 1891, the general freight agent of the defendant Receiver, received through the United States mail, a communication dated June 20th, 1891, a copy whereof is as follows:

OFFICE OF
RAILROAD COMMISSION OF TEXAS.
AUSTIN, TEXAS, June 20th, 1891.

General Freight Agent I. & G. N. R. R:

DEAR SIR—In accordance with the requirements of section four of the act creating the Railroad Commission of Texas, passed at the regular session of the 22d Legislature, and approved April 3, 1891, the railroad Commission of Texas will, on Monday, July 6th, 1891, begin and continue from day to day, until completed, the classification and subdivision of all freight and property of whatsoever character that may be transported over the railroads of this State, into such general or special classes or subdivisions as may be found necessary or expedient, and the fixing for each class or subdivision of freight a reasonable rate for each railroad, subject to this act, for the transportation of each of said subdivisions or classes; also that at the above-named time and place a special classification, and rates of charges thereon, of cotton, grain, lumber and salt will be made. Your attention is also called to section eight of the act aforesaid, which

provides that, in all cases where the rates shall not have been fixed by the Commission, no changes shall be made, except after ten days' notice to, and consent of Commission. Therefore, the changing of any rates in force June the 10th, 1891, except after notice as above provided, and the consent of the Commission, is unlawful.

Please acknowledge the receipt of this notice, and oblige.

JOHN H. REAGAN,
Chairman.

J. J. ARTHUR,
Secretary.

Although said communication did not inform said Receiver or his agents of the rates, or the changes in the then existing rates, which said Commission proposed or intended to make at said time, still said general freight agents and other representatives of said Receiver appeared before said Commission at its office in the City of Austin at the time in said notice named and requested said Commission to indicate the rates they proposed to fix, and the changes they propose to make in the then existing rates, for the transportation of property by said Receiver in order that the Receiver should have the opportunity then to present any evidence he might be able to produce, appropriate and material to the action which the Commission proposed or intended to take in the premises; which request the Commission failed and refused to grant. That the agents and representatives of the Receiver were therefore unable to produce testimony, appropriate or material, to any possible action of the Commission, but the agents or representatives of said Receiver at said time did present such information, of a general character, to said Commission as to them seemed in any way appropriate or material to the matters upon which the Commission had indicated its purpose to act, and as far as possible gave all information requested or suggested by said Commission as material to such matters.

Shortly thereafter there appeared in the newspapers of the State a statement which, as your Orator is advised and believes, was authorized by said Commission, to the effect that the Commission invited the presence of representatives of towns and cities, boards of commerce or individuals who might desire to present any matter or com-

plaint to the said Commission to be present on and after July 6, 1891.

That said defendant Receiver did not in any way waive the giving of any notice required by law, but his representative merely appeared before said Railroad Commission, as did other citizens and inhabitants of the State who had any concern or interest in the proceedings of the Commission.

That the said Commission did not, as it had declared its intention in said notice to do, fix said rates or any rate whatever at its said session, or indicate any time when it would fix such rates, but adjourned and deferred action upon the matter stated in said notice indefinitely, and terminated its session wifhout action and without adjournment to any specified day.

That thereafter, and subsequently to July 29, 1891, the general freight agent of the defendant Receiver received through the United States mail a communication from the said Railroad Commission enclosing a proposed schedule of rates on corn, wheat, rye, barley, oats, bran, mill feed, mill stuff, hay, flour and meal in sacks or barrels, and salt in sacks or barrels, which said proposed schedule was accompanied by the following notice:

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, July 29, 1891.

DEAR SIR:—The schedule of rates on the commodities herein named is proposed by the Railroad Commission of Texas to the general freight agents of the several railroads in Texas for their consideration and such suggestions as they may see proper to make. Action will be had on this schedule August 5, and all communications relating thereto must be received by that date to receive attention of of the Commission.

JNO. H. REAGAN, Chairman.
J. J. ARTHUR, Secretary.

That thereafter, and subsequently to the 30th day of July, 1891, said general freight agent received through the United States mail, communications from said Commission, including proposed rates on lumber, shingles and cotton, which communications are respectively as follows:

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, July 30, 1891.

DEAR SIR:—The schedule of rates herein proposed is submitted for the consideration of the general freight agents of the several railroads in Texas. Such suggestions in relation thereto as they may desire to make must reach this office by August the 7th to receive attention from the Commission.

JOHN H. REAGAN, Chairman.
J. J. ARTHUR, Secretary.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, July 31, 1891.

DEAR SIR:—The schedule of rates herein proposed is submitted for the consideration of the general freight agents of the several railroads in Texas. Such suggestions in relation thereto as they desire to make must reach this office by August the 6th, to receive attention by the Commission.

JOHN H. REAGAN, Chairman.
J. J. ARTUHR, Secretary.

That the time within which, by the terms of said notice, communications or objections to such proposed rates upon the part of said Receiver, in order to receive consideration by said Railroad Commission, as appears from the dates and times of the receipt of the said notices by said general freight agent, was less than ten days. That said Commission were requested to extend for ten days the time for hearing prescribed by said notices, which request was refused by said Commission. That, although ten days' notice thereof was not given, the agent of said Receiver appeared before said Railroad Commission, at its rooms in the capitol at Austin, and produced statements, showing the unjust, unreasonable and illegal character of said proposed rates. That the said Commission did not, as indicated in said notices and communications last referred to, fix rates on said articles, or any rates whatever, at the time and places, or at either of the times or places in said notices specified.

That thereafter the general freight agent of the defendant Receiver received from the said Commission, through the United States mails, the several communications,

schedules, copies of commodity tariffs, and circulars, copies of which are filed herewith as part hereof marked "Exhibit C;" that said communications, schedules, copies of commodity tariffs and circulars were severally so received on or about the day following their respective dates.

That in addition to the communications, copies of which are so filed herewith, the general freight agent of the defendant Receiver and of many railroad companies of Texas have received frequent informal communications from said Commission, or from said Chairman Reagan, relating to the tariffs, orders and action of said Commission and to the duties, liabilities and action of the railroad companies in respect thereto; and the said general freight agent of the defendant Receiver and the general freight agent of said Texas railroad companies have addressed and sent to the said Commission numerous communications statements and protests relating to action proposed and taken by said Commission in the making and announcement of its various tariffs and orders herein complained of. To all of said communications, statements and protests, your orator prays leave to refer with the same effect as if the same were herein set forth.

That said Commission has never served, or caused to be served, on the defendant railroad company, or defendant Receiver, any certified copy of its purported tariffs, or either of them, the only pretended service being by mailing to the said general freight agent mimeograph copies of said tariffs, copies of which are filed herewith and included in said "Exhibit C." Nevertheless, said Commission and said defendant Culberson, Attorney-General, and divers other persons are seeking and attempting to force the said defendant Railroad Company and said defendant Receiver to put and continue the same in effect, and threaten and propose to enforce the same through and by the suits; actions and penalties prescribed by said act of April 3, 1891.

That said Railroad Commission, without further or other notice, or pretended notice, than those hereinabove set forth, are proposing and threatening and proceeding to make and announce other and further schedules of rates and tariffs upon other commodities.

That the said schedules and copies of commodity tariffs, filed herewith as aforesaid, are promulgated by said Commission and intended by them as schedules of the

rates of charges, for the transportation of the articles named therein, over railway of defendant Company, which rates and charges said Commission assumes to establish and fix under the authority purporting to be conferred upon it as such Commission by said Act of April 3, 1891. And the said Commission threatens and intends, under the penalties of the said Act, to compel said defendant Railroad Company and defendant Receiver to adopt the said several schedules as rates of charges to be made by him and it for the transportation of said articles over said railway, and the said defendan Receiver has adopted the same so far as by terms thereof they have become effective, and proposes and intends to adopt and unless restrained by order of the Court, will adopt those still to become effective, as required, or sought to be required by said Commission.

Your Orator avers that none of the rates promulgated or attempted to be promulgated by said Commission, and specified in said schedules, were fixed or attempted to be fixed by said Commission at any time or place whereof the said defendant Company or Receiver had ten day's notice or any specific notice whatever, and that the commnnications from the said Commission, and from its chairman hereinbefore referred to constitute the sole and only notice to said Company and Receiver in the premises.

That during the purported hearings before the Commission on said proposed tariffs, it was proposed to said Commission that, if it would grant a reasonable time, estimates would be made showing the movement of each of the commodities upon which it was proposed to make tariffs, the rates charged under the then existing tariffs, and the revenue derived therefrom, and showing the revenues which would have been derived if the preposed tariffs of the Commission had been applied thereon. Said statement, when furnished to the Commission, would not only have shown the effect of said proposed rates, but they could have easily derived therefrom a knowledge and understanding of the effect upon the revenues of railway companies, of any system of rates they might have under consideration. Said offer was declined by said Commission, and they proceeded as aforesaid to establish and announce said schedules, without having secured any reasonable data, statistics or information to enable them even to approximate, with any degree of correctness, the

effect of any of the rates considered or established by them.

That at the said sessions of said Commission no witnesses were sworn and no evidence introduced, and no formal charges preferred against said defendant Company or Receiver, and any and all persons who desired to be present were allowed to participate in the proceeding. That said Commission, although it was fully empowered by law so to do, and was requested so to do, failed and refused to appoint experts, or to adopt any other means of investigating the financial condition and the revenues and resources of the said International and Great Northern Railroad, or any other railway companies of the State, and failed to make any effort whatever to inform themselves as to whether the conditions were such as to authorize them to make a reduction in the rates or in the revenues of the railroads in general, or of said International and Great Northern Railroad in particular; that at the sessions of said Commission, of which the said defendant Receiver or defendant Company, or any other railway companies, were informed, or at which he or they were represented, no evidence whatever was introduced tending to show that the then existing rates of said Receiver, were too high, or were unjust or exorbitant, or yielded greater revenue than said Receiver was entitled to receive. That the said schedules of rates and charges were so established and promulgated by said Commission without any evidence whatever having been taken or adduced before it, which showed or tended to show that said rates and charges were just, fair or reasonable, and the same were so fixed and established notwithstanding that the uncontridicted showing made by the representatives of the railroad companies before said Commission tended to show and did show that such rates and charges would be unjust, unfair and unreasonable.

EIGHTH. That the classifications and schedules of rates and charges so announced and promulgated in and by said commodity tariffs and circulars of said Commission, or sought so to be, as hereinbefore shown, are unfair, unjust and unreasonable, and that the same cannot be adopted or put or continued in effect by the defendant Company or defendant Receiver without serious and irreparable loss to it, and serious and irreparable injury to and destruction of the property, rights and

interests of your Orator and the beneficiaries of its trust as hereinafter more fully set forth; that the rates so charged and announced by said Commission are not compensatory, and are unresonably low, und that the adoption and enforcement thereof would result, as nearly as can be estimated, in a diminution of revenues derived from the operation of said International and Great Northern Railroad, aggregrating more than $200,000 per annum, and that the revenues from said railroad, so reduced and diminished, would be inadequate and insufficient to provide for the payment of the interest upon the prior obligations of the defendant Railroad Company, recited in paragraph 4 hereof, and the interest upon the Second Mortgage Bonds secured by said mortgage to your Orator as trustee, after providing for the expenses of operating said lines of railroad and property, and maintaining the same in proper order and good working condition, so that the traffic and business of said road, and of every part thereof shall at all times be conducted with safety to person and property, and with due expediton.

That the railroad and property of the defendant Company, upon which your Orator has the lien and in which it has the property, rights and interests hereinbefore referred, to have no other or different value or use than as railway property, and as the same are operated in the carriage of persons and commodities for hire, and that the value of your Orator's lien thereon and of its property rights and interests therein, is determined and fixed by the productiveness and earning capacity thereof.

Your Orator avers that if the said rates and charges so promulgated and sought to be enforced by said commission shall be adopted and continued in force by the said defendant Receiver, or shall be enforced by any or either of the other defendants hereto, and if the same shall become and remain operative, the result will be a serious and irreparable reduction of the value of the lines of railroad and property of the said defendant Company, and a serious and irreparable reduction of the earnings and income thereof, thereby impairing, taking and destroying your Orators's property and interest therein, and impairing, taking and destroying to that extent the investment under said Second Mortgage Bonds; and your Orator fears, apprehends and alleges that the value of said property having been thus conclusively fixed and established,

and the possibility of any adequate or fair productiveness in the future having been thus concluded, the said defendant Receiver and the said defendant Railroad Company will be unable to earn or provide for the full interest upon said Second Mortgage Bonds, and that his and its ability to earn and pay the interest upon said obligations prior to said Second Mortgage Bonds will be threatened and impaired.

Your Orator avers that the interest upon the First and Second Mortgage Bonds of the said Rairoad company is now, and has been for upwards of two years past, in default by reason of the inadequacy of the earnings of the lines of railroad and property to provide therefor, and to provide for very extensive and extraordinary renewals, replacements and betterments of said property which were deemed imperatively necessary by said District Court of Smith county, and which have been made and accomplished during said Receivership. That if the productiveness and earning capacity of said property shall be so impaired and destroyed as aforesaid, said Receiver and said defendant Railroad Company will be wholly unable to provide for or pay the said interest in default and in arrears, and to meet or pay future accruing interest upon either of said classes of obligations, and that the liens for the security of said prior obligations will be enforced through foreclosure proceedings carried to decree and sale, and that upon such foreclosure and sale the said railway and property would not bring, and by reason of their arbitrarily diminished earning capacity, might not be worth, a sum equal to the charges thereon prior to the mortgage indebtedness represented by your Orator as trustee, and in addition thereto any substantial or large proportion of the debt represented by said Second Mortgage Bonds.

And so your Orator shows that the effect and operation of the said Railroad Commission Act and of the said action of said Commissioners in alleged pursuance thereof threaten to deprive your Orator and the beneficiaries of its trust of its and their property, rights and interest; and your Orator further avers that it and they would be so deprived of said property, rights a nd interests without due process of law, and in violation of the Constitution and Laws of the United States, and of the Constitu-

tion and laws of the State of Texas as hereinafter more fully alleged and shown.

Your Orator further avers upon information and belief that the prior mortgage indebtedness hereinbefore recited in paragraph fourth hereof, and the indebtedness to the holders of the bonds secured by the said mortgage to your Orator and the stock capitalization of the defendant Railroad Company, represent the actual cost to the said company of the construction, acquirement and equipment of its lines of railway and property, and the reasonable value thereof, and the capitalization upon which it and said Receiver are entitled to earn, and should pay, full and fair returns by way of interest and dividends. That such returns should be not less than a sum sufficient to provide for the entire interest on the bonded debt of defendant Company, and said Railroad Commission may not reasonably or lawfully establish rates and charges which will restrict the earnings of said Company or Receiver so that it will be unable to meet these requirements.

NINTH. Your Orator avers that each and all of the rates, charges and classifications prescribed by said defendant Receiver in force at the time when said Commission Act was adopted by the Legislature of Texas, and when the several tariffs and orders of the Commission were promulgated as hereinbefore stated, were in no case unreasonably high; that the same were not in restraint of a free movement of all commodities affected thereby; that the same were far less than the rates and charges for like transportation of like articles prior to the construction of the lines of railway of the defendant company, and that the same were not and are not, sufficient to enable the said defendant company to pay the interest upon its bonds. Wherefore your orator avers that a reduction of said rates and the establishment of any reduced rates are and would be unjust and unreasonable, and in effect a confiscation and appropiation to the use of others of a portion of the capital invested by the beneficiaries of your orator's trust, and by other persons, in the railroad and securities of the defendant company, and a taking of the property of said company, and of your orator, and the beneficiaries of its trust without due process of law, and not in due course of law, and without adequate compensation being made, contrary to,

and in violation of Section 1, of Article 14, of the amendments to the constitution of the United States, and Sections 17 and 19, of Article 1, of the constitution of the State of Texas, of the year 1876.

Your Orator further avers that said rates, charges and classifications were fixed and established by defendant Receiver with a careful regard for the financial, commercial and competitive conditions and laws which enter into effect or control the making and relative adjustment of rates and classifications in the State of Texas, and yet that said receiver during the year 1890, earned from the operation of said railways and property only the sums stated in the following paragraph of this bill of complaint.

TENTH. Your Orator avers that the following is a statement of the income account, covering the operations of said railroad and property during the years 1889 and 1890, and the first nine months of 1891:

INCOME ACCOUNT OF THE INTERNATIONAL & GREAT NORTHERN RAILROAD FOR 1889.

DEBIT.

To Operating Expenses:

Conducting transportation	$ 754,415 61		
Motive power	811,196 09		
Maintenance of way	755,074 16		
Maintenance of cars	183,056 44		
General expense	125,710 60		
		$ 2,629,452 90	
Surplus earnings		858,732 24	
		3,488,185 14	
Interest and exchange			$ 992 75
Accrued interest on bonds—			
First mortgage bonds I. & G. N. R. R.	68,177 14		
Second mortgage bonds I. & G. N. R. R.	59,730 00		
Colorado river bridge bonds	15,750 00		
			143,657 14
Taxes for 1888	272 34		
Taxes for 1889	24,683 30		
			24,955 64

Sundry amounts—		
Amount paid assistant treasurers' account interest on defaulted 2nd mortgage coupons	113 35	
Amount paid on duplicates and pay checks, canceled prior to May 1, 1888	132 15	
Amount of sundry payments made account the Missouri Pacific Railway, lessee, accounts prior to May 1, 1888	20,638 46	
Amount of sundry payments made by receivers I. & G. N. R. R, account business prior to February 21, 1889 $40,176 14		
Less am't rec'd. 12,499 86	27,676 28	
Deficit in operation of company's stock yards January 1, 1889, to February 20, 1889	613 34	
		49,173 58
Balance of income account December 31, 1889		3,262,300 25
		$3,481,079 36

CREDIT.

By Earnings.

Freight	$2575,165 46	
Passenger	728,505 03	
Mail	92,678 11	
Express	65,664 39	
Rent	4,267 71	
Miscellaneous	21,904 44	
		3,488,185 14
		$3,488,185 14
Surplus earnings brought down		$ 858,732 24

Dividends received—		
From Union Compress and Warehouse Co.....	3,080 00	
From Capitol Compress Co..	2,000 00	
From Palestine Compress Co.	2,500 00	
		7,580 00
Mileage due E. T., V. & G. R. R. refused by them.....		1 18
Amount to adjust difference between balance of material accounts and inventory taken February 20, 1889..		2,647 26
Balance of income account January 1, 1889		2,612,118 68
		$3,481,079 36

INCOME ACCOUNT OF THE INTERNATIONAL AND GREAT NORTHERN RAILROAD, DECEMBER 31, 1890.

DEBIT.

To Operating Expenses:

Conducting transportation..	$865,238 96	
Motive power.....	944,677 71	
Maintenance of way.....	957,394 42	
Maintenance of cars.....	249,634 98	
General expense	131,299 02	
		$ 3,148,245 09
Surplus earnings		498,177 24
		$3,646,422 33
Interest and exchange		$ 593 06
Accrued interest on Colorado River Bridge Bonds.....		15,003 34
Taxes for 1889.....	332 00	
Taxes for 1890	26,403 89	
		26,735 89
Sundry amounts—		
Sundry payments by Receivers acct. business prior to February 21, 1889.....		
.... $ 21,877 79		
Less am't received 8,155 91	13,721 88	

Sundry payments by Receivers acct. the Missouri Pacific Railway, lessee, accounts prior to May 1, 1888	2,645 57	
		16,367 45
Balance of income account, December 31, 1890.....		3,719,560 66
		$ 3,778,260 40

CREDITS.

By Earnings:

Freight.....	$2,591,956 00	
Passenger.....	859,257 07	
Mail.....	102,756,52	
Express	66,712 08	
Rent	2,997 65	
Miscellaneous.....	22,743 01	
		$ 3,646,422 33
		3,646,422 33
Surplus earning brought down		498,177 24
Dividends received—		
From Union Compress and Warehouse Co.....	3,300 00	
From Capitol Compress Co.	4,500 00	
From Palestine Compress Co	4,500 00	
		12,300 00
Interest on 16 Colorado River Bridge Bonds purchased and placed in sinking fund, bonds and coupons thereby cancelled.....	989 43	
Amount of unclaimed pay checks and duplicates prior to July 1, 1890, cancelled $ 3,188 12		
Less amount paid.....11 45	3,176 67	
Amount received from the H. & T. C. R'y and So. Pac. Co., Atl. Syst. in statement of suit for C. H. & H. Ren-		

tals, account terminal facilities at Houston.....	1,316 81	
		5,482 91
Balance of income account January 1, 1890.....		3,262,300 25
		$ 3,778,260 40

INCOME ACCOUNT OF THE INTERNATIONAL AND GREAT NORTHERN RAILROAD FOR NINE MONTHS ENDING SEPTEMBER 30, 1891.

DEBIT.

To Operating Expenses:

Conducting transportation..	$ 703,200 98	
Motive power.....	728,922 62	
Maintenance of way.....	683,352 65	
Maintenance of cars.....	172,761 95	
General expenses.....	90,117 36	
		$ 2,378,355 56
Surplus earnings.....		99,649 79
		$ 2,478,005 35
Accrued interest on Colorado River bridge bonds		$ 10,972 49
Taxes for 1890.....	708 87	
Taxes for 1891.....	779 92	
		1,488 79
Sundry amounts—		
Sundry payments by receivers account business prior to February 21, 1889.....		
$ 14,585 27		
Less am't rec'd.. 69 03	14,516 24	
Sundry payments by Receivers account the Missouri Pacific Railway lessee accounts prior to May 1, 1888	1,342 36	
		15,858 60
Balance of income account September 30, 1891.....		3,795,785 68
		$ 3,824,105 56

CREDIT.

By Earnings.

Freight	$1,679,768 07	
Passenger	635,696 17	
Mail	91,123 10	
Express	55,722 14	
Rent	1,631 00	
Miscellaneous	14,064 87	
		$2,478,005 35
		$2,478,005 35
Surplus earnings brought down	99,649 79	
Dividends received from Union Compress and Warehouse Co.		2,860 00
Amount of unclaimed pay checks and duplicates prior to January 1, 1891, canceled	2,202 03	
Less amount paid	166 92	
		2,035 11
Balance of income account January 1, 1891		3,719,560 66
		$3,824,105 56

Your Orator avers that the following is a tabular statement of the revenue per ton per mile derived from the operation of the International and Great Northern Railroad during the years 1883 to 1890, inclusive:

INTERNATIONAL AND GREAT NORTHERN RAILROAD.

Statement Showing Revenue per Ton per Mile in Cents.

Revenue per Ton per Mile for 1883	2.03
" " " " " 1884	1.90
" " " " " 1885	1.71
" " " " " 1886	1.65
" " " " " 1887	1.38
" " " " " 1888	1.33
" " " " " 1889	1.44
" " " " " 1890	1.38
For first nine months of 1891	1.30

And your Orator avers that it appears from said state-

ments, and the fact is, that any further reduction of the rates and charges of the defendant Company and Receiver, involving a further reduction of revenue, will have the effect hereinbefore stated.

Your Orator avers that there will be no compensatory increase in the business and tonnage of the said railroad, resulting from the reduced rates established by said Commission or otherwise; and that, as your Orator is informed and believes, there will be no appreciable or substantial increase whatever in such business or tonnage.

ELEVENTH. Your Orator further alleges that the injurious and destructive effect of the establishment of said unjust and unreasonably low rates, would not be limited to the business of the defendant Receiver transacted within the limits of the State of Texas; but said rates would affect the interstate business of said Receiver and impair and diminish the revenues derived therefrom. In this behalf your Orator avers that all interstate rates, in which the defendant Receiver and all railway companies of Texas participate, are based upon the rates prevailing between Galveston and interior points in the said State of Texas. That the interstate rates are controlled and determined by water competition; that is, the water rates between foreign or Atlantic seaboard points and Galveston, added to the local rate between Galveston and interior Texas points of origin or destination of shipment, make the rate which the interstate lines are compelled to meet or adopt. So that your Orator shows that a corresponding decrease of interstate rates would ensue from the reductions of *intra*-state rates required by the schedules heretofore announced by the Commission. These conditions affect substantially all classes of shipments which are handled by the defendant Receiver, and your Orator is informed and believes, and therefore avers, that serious and irreparable reduction of revenues from interstate business, would be caused by the adoption and enforcement of said schedules.

TWELFTH. Your Orator further avers, that by an order, rule, rate and regulation made and established by said Commission on the 6th day of November, 1891, and promulgated, published and designated by it as Circular No. 34, a copy whereof is filed herewith as part hereof, included in said Exhibit "C" to this bill, said Commission requires and commands, and unless restrained by

this court will compel the defendant Receiver upon the demand of the owner of any freight or property contained in any car owned by said defendant Company or Receiver in its or his possession, to surrender and deliver such car containing said freight or property to any railway company designated by said owner with which the railway of defendant company connects, to be used by such other railway company upon its own lines and its connections, in the transportation of said property to any place off the line of defendant company's railway designated by the owner of said freight. That under the terms of said order, rule and rate, the cars of the defendant company or said Receiver may be taken from his possession and used as above stated without the consent of the defendant Railway Company or of said Receiver, and without adequate compensation, and without other compensation for the use thereof by such shipper or other railway company while off said defendant company's line and out of its possession and the possession of said Receiver, than a rental fixed by the said Commission during the period of such enforced bailment, and without any security for the safe or prompt return of said car or indemnity against damage or injury which may be done thereto.

That by said order, rate, rule and regulation, said Commission also requires and commands, and unless restrained by this court will compel the defendant Receiver under pain of the penalties by said Act prescribed upon the tender of any car containing freight or property for transportation and demand of the owner of such freight or property, or upon the demand of any railway company having such car in its possession, to receive the same for transportation to any point on or beyond defendant Company's own line which the owner of such freight or property may designate, and to pay to the railway company or person or corporation owning the car a mileage rate for every mile which said car may, under the direction of the owner of the freight therein, or of the said railway company tendering said car, be hauled over the International and Great Northern Railroad as aforesaid, although said defendant Company owns and possesses a large number of cars for the transportation of property received by said Receiver as a common carrier, and has, except during rare seasons of extraordinary business activity, a suf-

ficient number of idle cars available for such use. After such car has been transported to the point designated by the owner of the freight contained therein, the defendant Receiver is by said order, rate and rule, required to again haul said car over defendant Company's railway and re-deliver it to the company from which it was received without any compensation whatever for such carriage and service.

That said order, rate and rule also requires said Receiver to perform any necessary switching service in receiving from, or delivering to any connecting railway line any such car, without compensation or reward.

That in the respects above recited, the defendant Company and said Receiver would be by said order, rate and rule, deprived of their property without due process of law, and not in due course of law contrary to Section 1 of Article 14 of the Amendments of the Constitution of the United States, and of Sections 17 and 19 of Article 1 of the Constitution of the State of Texas.

That the effect and operation, and as your Orator is informed and verily believes, the purpose of said order, rate and regulation, is among other things the regulation of commerce between the State of Texas and other States and foreign countries, and the regulation of the rates of transportation of shipments of an interstate character, by permitting the interruption of such commerce and shipments at points within the State of Texas in such a way that a point intermediate between the real points of origin and destination of the shipments may be fixed as point of temporary destination, and the shipment rebilled from the latter point to its actual and final destiuation, the shipment in the State of Texas, between this temporary point and the actual and real point of origin or destination, taking the rate established by the said Commissiin, and not the through interstate rate established under and in accordance with the Constitution and laws of the United States.

In this repect your Orator shows that said order, rate and rule so announced and published as said Circular No. 34, and said Act of the Legislature of the State of Texas purporting to confer upon said Railroad Commission power and authority to make, announce and enforce said order, rate and rule, are invalid and void because in conflict with and in violation of Section 8 of Article 1 of the

Constitution of the United States, and an Act of Congress of the United States entitled "An Act to regulate commerce," approved February 4, 1887, and the amendments thereto.

THIRTEENTH. Your Orator further shows that in Section 5, of said Act of the Legislature of Texas, establishing the said Railroad Commission it is provided that in all actions between private parties and railway companies brought under said law the rates, charges, orders, rules, regulations, and classifications prescribed by said Commission before the institution of such action shall be held conclusive and deemed and accepted to be reasonable, fair and just, and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for that purpose in the manner prescribed by Sections 6 and 7 of said act. So that your Orator alleges that unless the relief herein sought be granted the failure of the defendant Receiver to adopt and put into effect and use the unreasonably low and uncompensatory rates heretofore prescribed by said Commission, would subject him to a multiplicity of suits brought by shippers for the penalties provided in Section 17, of said act; and that in such action the said Receiver would be deprived of the lawful defense that the rates and charges so prescribed by said Commission were and are unreasonable; and the said Receiver, so concluded and deprived of lawful defense, would be subjected to innumerable penalties, ranging from $125 to $500, in each case, and defendant Company would be thereby deprived of the property without due process of law, and in a proceeding wherein his liability was fixed in advance, contrary to the Constitution and Laws of the United States, and to the Constitution and Laws of the State of Texas. Your Orator furthermore alleges that in such suits by individual shippers the said Receiver would be deprived of the right to a trial by jury of the issue involved in the said lawful defense, that said rates and charges were and are unreasonable, and that such deprivation of said right is and would be contrary to Section 15, Article 1, of the Constitution of the State of Texas.

Your Orator avers that Section 6, of said Act provides that any railroad company or other party at interest, dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the Commission, may file a petition setting forth the particular cause

or causes of objection to such decision, rule, etc., in a court of competent jurisdiction in Travis county, Texas, against said Commission as defendant; and Section 7 provides, that in all trials under Section 6 the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to them. Said Sections 6 and 7 provide the only contingency (except in suits on behalf of the State for penalties) in which railway companies may contest or controvert the reasonableness of a rate announced by the Commission, and the effect of said act (except as to such suits on behalf of the State), is to withdraw wholly from all railway companies subject to the operation of the act, including the Receiver, defendant herein, the right to make the defense that any charges, regulations or classifications of the Commission are unreasonable, and (with said exception) limits the making of that issue to an affirmative proceeding directly instituted for that purpose, in a single local court, wherein the burden of proof is fixed as above recited; and the effect of said act is to deprive railway companies subject to the operation thereof of the right to make a lawful defense under and subject to settled rules of evidence in any proceeding which may be instituted by individuals against it, thereby taking the property of said railway companies without due process of law, and denying to them the equal protection of the laws, contrary to the Constitution and Laws of the United States, and especially Section 1 of Article 14, of the amendments to said Constitution, and to the Constitution and Laws of the State of Texas, and especially to Sections 17 and 19 of Article 1, of said Constitution of Texas.

Your Orator further alleges that the defense that any rate or charge is unreasonable cannot, under the provisions of said act, be made in any such suit by individuals until said court of Travis county has found that such rate or charge is not reasonable, fair or just, and the effect of said act in this respect is that upon such finding by the Travis county court the defense that such rate is unreasonable, unfair or unjust may only thereafter be made in suits instituted by individual shippers, so that, as your Orator shows, the operation of said act is to deny the right to make such defense in such suits by indi-

vidual shippers until there has been an adjudication upon such issue in a suit between other parties in the tribunal of Travis county, and thus the practical effect of said act is to deny to railway companies the right to make a lawful defense pending the institution by said railway companies, in a different tribunal and against other parties, of a suit for the purpose of directly making the issue involved in said defense and of making such issue under the adverse conditions and the extraordinary and arbitrary presumptions and rules of evidence established by Section 7, of said Act. In the meantime innumerable judgements may be recovered in suits by individuals, and said Act provides no relief against such judgments, notwithstanding the said tribunal of Travis county may subsequently declare the rates and charges for the violation of which said judgments of individuals may have been procured, were unfair, unreasonable and unjust.

Moreover, your Orator, as it is advised and believes, alleges that the right pretended to be conferred by said Act of contesting in a court of competent jurisdiction of Travis county, the reasonableness, fairness or justness of any rate, charge, or act of the said Commission, is without effect and without value to the railway companies or persons interested in the railways and properties subject to the operation of said Act; for as your Orator is further advised and alleges, under the Constitution of the State of Texas, establishing the judicial system of said State and defining the jurisdiction of the several courts, there exists in Travis county no court of competent jurisdiction in the premises. And in this behalf your Orator further alleges that the Constitution of the State of Texas (Article V.) prescribes a complete judicial system for said State, and the Legislature of the State of Texas is without power or authority to add to or take from the jurisdiction of the several courts of said State as defined by said Constitution, or to create or constitute any court or judicial tribunal, or to invest any court created under and by virtue of the Constitution of the State of Texas, or any body or tribunal constituted by Legislative act, with any judicial powers or jurisdiction whatever. And your Orator avers that under the limitations of jurisdiction prescribed by the said Constitution of the State of Texas, the courts of Travis county, in said State, and

each and all of them, are wholly without jurisdiction and judicial power to entertain the petition of any railroad company, or other party dissatisfied with the decision of rates, charges, etc., as provided in Section 6, of said Act of April 3, 1891, and said courts and each and all of them are without jurisdiction and judicial power to determine or adjudicate any of the matters purporting to be committed to them or either of them by said Sections 6 and 7 of said act.

Your Orator shows that, even if it should be held that a court of Travis county, would have jurisdiction of such an action, the remedy provided thereby would be wholly inadequate, if, pending the litigation, the tariffs of said Commission should be enforced as provided in said act And your Orator shows that, under the practice of the State of Texas, the trial of such an action and appeal therein may be extended over a long period of time, and that a final and conclusive adjudication upon the reasonableness and justness of rates may not be obtained in a less time than one year from the institution of such an action, during which time the defendant Receiver and defendant Company and your Orator and the beneficiaries of its said trust, would suffer great and irreparable loss and injury under the enforcement of said tariffs, inasmuch as no provision is made in and by said act for restitution in the event that it shall be finally held that the tariffs of said Commission or any of them are unjust and unreasonable.

FOURTEENTH. Your Orator further avers that the penalties denounced by said Act of April 3, 1891, for failure to comply with any of the provisions thereof, or with any of the rules, regulations, charges or rates prescribed and fixed by said Commission, are wholly immoderate, unreasonable and excessive, and bear no just relation to the causes or matters with respect to which they are denounced; and that said excessive penalties are as your Orator verily beleives, prescribed by said Act with the view and intention that the same shall operate as a threat and menace to the defendant Receiver and defendant Company, and to other railway companies, subject to the operation of said act, to the end that they may be thereby compelled and coerced into the adoption of the rates and charges prescribed by said Commission, whether or not the same shall be reasonable, fair and just. That the

enforcement of the multiplied and excessive penalties prescribed by said act would result in serious loss and damage and possible bankruptcy to railway companies subjected thereto; and the operation of said act in this respect is harsh, unreasonable and confiscatory; and your orator avers that said act constituting said Railroad Commission is, in this respect, contrary to and in violation of the Constitution of the State of Texas.

FIFTEENTH. Your orator avers that unless immediate relief is granted, the tariffs of said Commission will cause a serious and very large reduction in the earnings and revenue of said Receiver, which will be irretrievably lost and that such loss will be daily sustained until such relief is granted.

In conclusion, your orator alleges that it has requested the defendant Receiver to refuse to recognize, adopt or enforce the unfair and unreasonable rates prescribed in said schedules; but said Receiver declined to so refuse, and said Receiver has adopted said rates so far as the same have been declared effective by said Commission, and intends and proposes to adopt any rates already announced, but not yet effective under the terms of said schedules, and to put the same in force and effect, upon the ground that, under said Act of April 3, 1891, he would otherwise be defenseless against the multiplied penalties recoverable at the suits of individual shippers and the additional penalties recoverable in actions instituted by the defendant Culberson;—said Receiver fearing that the consequences of such refusal might thus be even more disastrous and ruinous than the operation and effect of said unreasonable rates. Your orator further alleges that it has been requsted by the holders of more than a majority in amount of said Second Mortgage bonds of said Railroad Company to bring this, its bill of complaint, for the relief herein sought, and that its action in this behalf is taken in response to and in compliance with said request.

Your orator avers that it was and is duly authorized and empowered by law and its charter to accept and administer its Trust herein stated, as Trustee of the Second Mortgage of the defendant Railroad Company, and to take the action and sue for the relief herein stated and sought.

Your orator shows that this cause is a suit in equity

of a civil nature, and that the matter in dispute exceeds exclusive of interest and costs the sum or value of five thousand dollars, and that this cause is a suit arising under the Constitution and laws of the United States, to-wit: Under Section 10, of Article 2, of the Constitution, and under Section 1, of Article 14, of the amendments to the Constitution; and that in this case and suit there is a controversy between citizens of different States in which the matter in dispute exceeds exclusive of interest and costs the sum or value aforesaid.

In consideration whereof and for as much as your Orator is remediless in the premises under the rules of common law, and can have adequate relief only in a Court of equity, where matters of this natnre are properly cognizable and relievable, to the end therefore that the defendants hereinafter named may answer the several matters and things hereinbefore set forth, as fully and particularly as if the same were herein again repeated, and they were thereto interrogated, and that an injunction may issue out of this court restraining and enjoining the said The International and Great Northern Railroad Company and said Thomas M. Campbell, Receiver, from putting or continuing in effect the tariffs, circulars or orders of the said Commission, or either or any of them herein described, and from charging or continuing to charge the rates specified in said tariffs, circulars or orders or either or any of them; and restraining the said Reagan, McLean and Foster and the said Charles A. Culberson, and each of them, from instituting or authorizing or directing any others to institute any suit or suits, action or actions against the said Railroad Company or against said Campbell, as Receiver, or otherwise, for the recovery of any penalties under and by virtue of any of the provisions of the said Commission law, and restraining all other individuals, persons or corporations now or hereafter claiming any right under and by virtue of the said Commission law or said tariffs or either of them, or both combined, or under and by virtue of the said tariffs or orders of the said Commission, or either of them, from claiming or instituting suit or suits against the said Railroad Company or against said Campbell as Receiver, or otherwise, for the recovery of any damages, overcharges, penalty or penalties under or by virtue of said Commission law or any of its provis-

ions or under and by virtue of the said tariffs, orders or circulars of the said Commission or any or either of them, or under and by virtue of the said Commission law and the said tariffs, orders or circulars, or any or either of them combined, and restraining the said Commissioners, and each of them, from making, issuing or delivering to the said Railroad Company or to said Campbell as Receiver, or causing to be delivered to it or him any further tariff or tariffs, circulars or orders, and that in the meantime until the hearing hereof your Orator may have a temporary restraining order embracing all of the relief herein prayed for, such restraining order to continue in force until the termination of the hearing for a writ of injunction, and that on final hearing of this cause it may have all injunctions herein prayed made perpetual, and that all tariffs, circulars and orders heretofore made and issued by said Commission, and each of them, may be cancelled and declared to be null, void and of no effect by decree of this court, and that a mandatory injunction may be issued to the said Commissioners, and each of them, commanding them to recall and abolish the said tariffs, circulars and orders, and each of them, and that your Orator may have such further and other relief as this case may require, as well as all costs. May it please your Honors to grant unto your Orator a writ or writs of subpœna, to be issued out of and under the seal of this Honorable Court and directed to the said defendants, the International and Great Northern Railroad Company, Thomas M. Campbell, John H. Reagan, L. L. Foster and William P. McLean and Charles A. Culberson, commanding said defendants, and each of them, to appear in this court at some certain day to be therein named, and to answer the premises, but not under oath (answer under oath being expressly waived), and abide by and perform such decree as may be rendered herein.

(L. S.) THE FARMER'S LOAN AND TRUST COMPANY.
By R. G. ROLSTON,
President.

Attest: E. S. MARSTON,
Secretary.

TURNER, McCLURE & ROLSTON,
FARRAR, JONAS & KRUTTSCHNITT,
WEST & McGOWN,
Complainant's Solicitors.

HERBERT B. TURNER,
JOHN F. DILLON,
JOHN J. McCOOK,
E. B. KRUTTSCHNITT,
Of Counsel.

STATE, CITY AND COUNTY OF NEW YORK, SS.:

Roswell G. Rolston, being duly sworn, says that he is the President of the Farmer's Loan and Trust Company, the plaintiff above named, and has been such President for a number of years past; that he has read the foregoing Bill of Complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true; and further, that the seal affixed to the said bill is the corporate seal of the complainant, and was affixed by him to said bill by authority of said complainant.

R. G. ROLSTON.

Sworn to and subscribed before me this 5th day of April, 1892.

[L. S.] JOHN McCLURE,
Notary Public, New York County.

EXHIBIT "A."

THIS INDENTURE, made the fifteenth day of June, in the year of our Lord one thousand eight hundred and eighty-one, between the International and Great Northern Railroad Company, a corporation existing under the laws of the State of Texas, of the first part, and the Farmer's Loan and Trust Company of the city of New York, a corporation existing under the laws of the State of New York, of the second part;

WHEREAS, The party of the first part heretofore, on the first day of November, in the year 1879, executed a certain indenture of mortgage to Samuel Thorne, William Walter Phelps and John S. Barnes, trustees, to secure

four thousand four hundred and seventy-four income bonds of the sum of one thousand dollars each, and five hundred income bonds for the sum of five hundred dollars each, and also a series of similar bonds for the sum of one thousand dollars each, to the amount therein prescribed; all of them bearing interest to such amount, not exceeding eight per centum per annum, as should be earned within each calendar year beginning with the year 1879 as therein set forth:

AND WHEREAS, Many holders of the said bonds desire to exchange them for bonds of this Company, bearing interest at the rate of six per centum per annum absolutely and free from all contingency, to be secured in the manner hereinafter prescribed;

AND WHEREAS, The party of the first part had on May 1, 1881, issued five thousand two hundred and eighty-four income bonds, as hereinbefore described, for the sum of one thousand dollars each, and five hundred such income bonds for the sum of five hundred dollars each, and intends to issue in exchange for said bonds a like amount of bonds in the form hereinafter prescribed and secured by this mortgage, and also a series of similar bonds for the sum of one thousand dollars each to the amount hereinafter prescribed, all of which bonds, notwithstanding the same may be issued at different times, are equally secured by these presents, are to be authenticated by a certificate signed by the party of the second part, and are to be substantially in the following form:

International and Great Northern Railroad Company, No.....$1000. Interest at six per centum per annum. Due September 1, 1909.

The International and Great Northern Railroad Company of Texas, for value received, hereby acknowledges itself indebted to the Farmer's Loan and Trust Company, of the city of New York, trustee, in the sum of one thousand dollars United States gold coin, which sum the said company promises to pay, at its agency in the city of New York, to the bearer, unless this bond is registered, and if registered, then to the registered holder thereof, in gold coin of the United States of the present standard of weight and fineness, on the first day of September, in the year 1909, together with interest thereon at the rate of six per centum per annum, from the first day of March, 1881, payable semi-annually, in like gold coin, on the first days

of March and September in each year upon presentation of the annexed coupons, as they severally become due, at the said agency of the Company in the city of New York.

This bond is one of a series of like tenor and date, of which 5284 for $1000 each, and 500 for $500 each, are intended to be issued in exchange for a like amount of income bonds issued before the first day of May, 1881, and secured by a second mortgage, and ten for $1000 each, but no more, may be issued for each mile of completed road thereafter constructed or acquired by the said company; all bonds of this series being equally secured by a mortgage or deed of trust of even date herewith, executed by the said Company to the Farmer's Loan and Trust Company, of the city of New York, as trustee, covering the entire railroad of the said Company, together with all the rolling stock, equipments, appurtenances, income, franchises, (including the franchise to be a corporation), privileges and immunities of the said company, now owned or hereafter acquired, and also by the deposit with the said trustee of income bonds under the existing second mortgage upon the same property, executed to Samuel Thorne, William Walter Phelps and John S. Barnes as trustees, to an amount equal to the bonds of this series, issued or to be issued, until the said existing second mortgage is fully satisfied and discharged of record; which income bonds are to be held by the said trustee for the protection of bonds of this series.

Upon default in the payment of interest on this bond for six months after it becomes payable and has been demanded, the trustee may, subject to the provisions of the said mortgage, declare the principal of all the bonds immediately payable, and must do so if required by the holders of one-fourth of all such bonds outstanding. This may be registered on the books of the Company at its agency in the city of New York, after which no transfer except upon the books of the Company, will be valid; but it is not to be deemed registered until the name of the holder is registered upon the back of the bond as well as upon the books of the Company. It may be registered in favor of bearer after which it will be transferable by delivery alone until again registered in the name of the holder. This bond shall not become obligatory until the cer-

tificate endorsed hereon is signed by the said trustee or its successor in the trust.

In witness whereof the said International and Great Northern Railroad Company has caused this bond to be subscribed by its president or vice-president and assistant treasurer, and its corporate seal affixed hereto, this fifteenth day of June, in the year one thousand eight hundred and eighty-one.

THE INTERNATIONAL & GREAT NORTHERN RAILROAD COMPANY,

By.....President.

.....

Assistant Treasurer.

(Coupon.)

The Intefnational and Great Northern Railroad Company will pay to the bearer at its agency in the city of New York,.....dollars in gold coin on....., being six months interest due that day on bond No.....

(Trustee's certificate.)

It is hereby certified that the International and Great Northern Railroad Company has executed to the Farmer's Loan and Trust Company of the city New York, a mortgage or deed of trust as described in the within bond and that no more of such bonds have been certified to by the undersigned than are authorized by said deed of trust.

THE FARMERS' LOAN AND TRUST COMPANY, TRUSTEE,

By.....President.

Now, therefore, this indenture witnesseth:—

That the said International and Great Northern Railroad Company, in order to secure the payment of the said bonds and interest thereon, and in consideration of the sum of one dollar to it paid by the party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, transferred and conveyed, and does hereby grant, bargain, sell, transfer and convey unto the said Farmer's Loan and Trust Company of the city of New York, party of the second part, and its successor or successors in this trust forever, all and singular the lands, tenements and hereditaments of the said railroad company, now owned or hereafter to be acquired by it, includ-

ing all its railroads, tracks, right of way, main lines, branch lines, superstructures, depots, depot grounds, station houses, engine houses, car houses, freight houses, wood houses, sheds, watering places, work shops, machine shops, bridges, viaducts, culverts, fences and fixtures, together with all its leases, leased oa hired lands, leased or hired railroads, and all its locomotives, tenders, cars, carriages, coaches, trucks and other rolling stock, its machinery, tools, weighing scales, turntables, rails, wood, coal, oil, fuel, equipment, furniture and material of every name, nature and description now held or hereafter to be acquired, together with all the corporate rights, privileges, immunities and franchises of said railroad company now held or hereafter to be acquired, (including the franchise to be a corporation), and all the tolls, fares, freights, rents, income, issues and profits thereof, and all the reversion and reversions, remainder and remainders thereof, in trust however for the uses and purposes hereinafter mentioned, excepting, however, and reserving from the lien of this mortgage, all land grants, lands, land certificates, town lots and town sites now or at any prior time owned or controlled by the said company, which were not on the first day of November, 1879, and have never since been actually occupied and in use by the said Company, and necessary to the occupation and maintenance of its lines of railroad;

To have and to hold the said property, premises, things, rights, privileges, immunities and franchises hereby conveyed or intended so to be, unto the Farmer's Loan and Trust Company of the city of New York, party of the second part, or its successor or successors, in trust for the owners and holders of the said bonds, or any of them, subject to the terms and stipulations of said bonds, and of the coupons thereto attached and subject also to the possession, control and management of the directors of the party of the first part, its successors or assigns, so long as it or they shall well and truly perform all and singular the stipulations of the said bonds and the covenants of this indenture.

That the bonds which may be issued under this mortgage shall not exceed the number and amount of bonds then issued under the existing second mortgage executed by said company on the first day of November, 1879, to Samuel Thorne, William Walter Phelps and John S.

Barnes, trustees, and surrendered to the party of the second part in exchange for bonds issued under this mortgage, until the second mortgage is satisfied and discharged of record, and shall not exceed five thousand two hundred and eighty four bonds for the sum of $1000 each and five hundred for the sum of $500 each, with the addition of ten bonds for $1000 each for each mile of completed railroad which has been constructed or acquired by the party of the first part since the first day of May, 1880, or which shall be newly constructed or acquired by the party of the first part, its successors or assigns, after the execution of this mortgage; and no bond shall be issued for railroads to which the party of the first part, its successors or assigns, have not a good and valid title; and if there is any lien or incumbrance upon railroads hereafter acquired by the party of the first part, its successors or assigns, other than the two mortgages already executed by the said company and now outstanding, dated the first day of November, 1879, the issue of new bonds on account of such railroad shall be withheld to the amount of such lien or incumbrance, until the same is discharged.

That the said trustee, or its successor in the trust, may in its discretion accept a certificate signed by the President and Chief Engineer of the party of the first part, its successors or assigns, as conclusive evidence of the number of miles of completed railroad so newly constructed or acquired. That in case the party of the first part, its successors or assigns, shall fail to pay the interest on any of the said bonds, at any time when the same may become due and payable, according to the tenor thereof and shall continue in such default for six months after such payment has been demanded at its or their agency in the City of New York, then and thereupon the principal of all the bonds hereby secured shall be and become immediately due and payable; provided, the said trustee gives written notice to the party of the first part, its successors or assigns, of its option to that effect, while such default continues, which notice it shall be bound to give, if required in writing to do so by the holders of twenty-five per centum of said bonds then outstanding; and that in such case, or upon the principal of said bonds becoming in any other way due and payable and remaining unpaid, in whole or in part, after demand thereof, the said trustee or its successor in the trust may in its dis-

cretion and shall upon the request of the holders of fifty per centum of said bonds then outstanding, take with or without entry or foreclosure, actual possession of said railroad, and of all and singular the property, things, and effects hereby conveyed, and personally, or by attorney, manage and operate the same, and receive all the tolls, rents, income and profits thereof, until such time as the said bonds and interest thereon are fully paid and satisfied and shall apply the money so received by it, first to the expenses of the trust hereby created, the management of the said railroad and its appurtenances and the needful repairs thereof, next to the payment of interest overdue upon the said bonds and interest upon delayed interest and afterwards to the payment of the principal of the said bonds. And the said trustee or its successor in the trust, upon becoming entitled to take possession of the railroad and property aforesaid may in its discretion and shall on the written request of the holders of at least one-half of the bonds then unpaid and outstanding, cause the said premises so mortgaged to be sold, either as an entirety or in such parcels as it shall deem necessary or proper, having due regard to the interests of all parties, to the highest bidder at public auction in the City of Austin, giving at least sixty days notice of the time, place and terms of such sale and the specific property to be sold, and whether the same will be sold as an entirety or in parcels, by publishing such notice in two newspapers in said City of Austin, and in one or more newspapers in the City of New York, once in each week during the said term of sixty days and that upon receiving the purchase money therefor, the said trustee, or its successor in the trust, shall execute to the purchaser or purchasers thereof a good and sufficient deed of conveyance in fee simple, which sale and conveyance shall forever be a bar against the party of the first part, its successors and assigns, and all persons claiming under them of all right, estate, interest or claim in or to the premises, property, things, franchises, privileges and immunities so sold or any part thereof, whether the said trustee is in possession thereof or not; and the receipt of the said trustee shall be full and sufficient discharge to such purchasers; and no purchaser holding such receipt shall be liable for the proper application of the purchase money or in any way bound to see that the same is applied to the uses of

this trust, or in any way answerable for its loss or misapplication or bound to inquire into the authority for making such sale.

And such sale to a purchaser in good faith, shall be valid whether said notice is given or not, and whether default in payment has been made or not.

That the said trustee shall, after deducting from the proceeds of such sale the cost and expenses thereof, and of the execution of this trust and all payments for taxes, assessments and counsel fees and its own reasonable compensation, apply so much of the proceeds as may be necessary to the payment of the principal and interest remaining unpaid upon the said bonds and coupons, together with all interest upon overdue coupons down to the time of sale, without giving preference to either principal or interest; it being the intention of this indenture that, so long as the railroad and its appurtenances shall be managed by the trustee or a receiver as a going concern, the income shall be applied to the payment of interest in preference to the principal, but that after a sale of the railroad and its appurtenances, no such preference shall be made in the distribution of the proceeds. That upon any sale of the said premises whether by trustee or under decree of the court, the holders of the bonds hereby secured or any of them, or the said trustee on behalf of all the bondholders, shall have a right to purchase upon equal terms with other persons; and it shall be the duty of said trustee if so required in writing, a reasonable time before such sale, by the holders of a majority in value of the outstanding bonds secured hereby, and upon being offered at the same time, adequate indemnity against all liability to be incurred thereby, to make such purchase upon behalf of all the bondholders, at a reasonable price, if *part* only of the property hereby conveyed is sold, or in case the whole property is sold, at a price not exceeding the whole amount of principal and interest due or accruing upon the said bonds, together with the expenses of the proceedings and sales, and the bonds secured by this mortgage shall be receivable at such sale as cash, for the amount of cash which would be payable on such bonds out of the proceeds of such sale.

That in case of the purchase said property or any part thereof by the trustee, the same shall be held for the benefit of all bondholders, in proportion to their respective

interests in the bonds, and the property thus purchased shall be conveyed to such persons or corporation as may be designated by a majority in value of the bondholders present at a meeting of the bondholders in the city of New York, regularly called by the trustee, upon reasonable public notice published in two newspapers of that city, provided that such conveyance shall be made upon such terms as will, in the judgment of the said trustee, secure to each and every bondholder his just proportion of interest in the property purchased as aforesaid.

That it is hereby expressly agreed that in no case shall any claim benefit or advantage be taken by the party of the first part, its successors or assigns, of any valuation, appraisement, extension or relief laws to prevent such entry or sale as aforesaid, and that nothing herein contained shall be construed as limiting the right of the said trustee to apply to the courts for judgment or decree of foreclosure and sale under this indenture, or for the usual relief in the course of such proceedings; and the said trustee may in its discretion apply to any competent court for relief by way of foreclosure or otherwise, if so advised by counsel, instead of taking possession of or selling the said property when required to do so by bondholders.

That the party of the first part, its successors and assigns, hereby covenant and agree with the party of the second part and its successors in the trust, that the proceeds of the bonds to be issued as hereinbefore mentioned, in addition to the specified number issued in exchange for income bounds then outstanding, shall be applied in good faith to the construction or purchase of additional railroad, and to the furnishing of additional equipment therefor.

That the party of the first part, its successors and assigns, further covenant and agree with the party of the second part and its successors in the trust, to make, execute, and deliver all such further deeds, instruments and assurances as may from time to time be necessary, and as the party of the second part, or its successor in the trust, may be advised by counsel learned in the law to be necessary, for the better securing to the party of the second part, and its successsor in the trust, the premises hereby conveyed and for carrying ont the objects and purposes of this indenture.

That the party of the second part and its successor in the trust may npon the written request of the party of the first part, its successors or assigns, convey or release any lands which it or they may cease to use for its corporate purposes by reason of any change of location of any station, house, building or cattle yards, connected with its railroad, or by reason of any change of the track of said railroad; provided, that at the same time such instruments shall be executed as will cause the lien of this mortgage to attach to all lands, tenements and hereditaments taken and used by the party of the first part, its successors or assigns, in place of the lands disused as aforesaid; and that in case of the sale of any such lands without exchanging them for other lands, the proceeds of such sale shall be paid to the party of the second part, or its successors in the trust, and be by it applied to the purchase of bonds secured by this mortgage, which bonds, when so purchased, shall be cancelled and a certificate of the respective numbers and amounts of the bonds so cancelled, shall be immediately furnished by the trustee to the party of the first part, its successors and assigns; that upon the payment of the principal and interest of all the bonds hereby secured, the estate hereby granted to the party of the second part shall be void, and the right to all the real and personal property hereby granted and conveyed, shall revert to and revest in the party of the first part, its successors or assigns, in law and in equity, without any acknowledgment of satisfaction, reconveyance, surrender, re-entry, or other act; that the party of the second and its successors in the trust, shall and will hold all income bonds issued under the second existing second mortgage, which may be deposited with it in exchange for bonds issued under this mortgage, in trust for the benefit of the lawful holder of the bonds issued under this mortgage, and will, if necessary, or if justice requires, inforce against the said company the income bond so held by it, and the mortgage securing the same, and secure for such bonds the full benefit of the said second mortgage on the same footing with other similar bonds, not deposited with the party of the second part or its successor in the trust, except that the party of the second part and its successor in the trust, shall and will accept the payment of interest upon the bonds issued under this mortgage, according to

the stipulations thereof, as full satisfaction and discharge of all claims against the party of the second part, its successors and assigns, for interest upon the income bonds deposited as aforesaid, and except, also, that the payment of the principal of any of the bonds issued under this mortgage, shall be accepted as a full satisfaction of an equivalent amount of said income bonds deposited as aforesaid, and upon such payment being made by the party of the first part, its successor or assigns, and evidenced to the party of the second part, or its successor in the trust, by the deposit of any bonds issued under this mortgage paid and cancelled, the party of the second part, or its successor in the trust, will cancel an equivalent amount of income bonds deposited as aforesaid, and except, also, that in the event of proceedings for a foreclosure or other enforcement of the said existing second mortgage, the party of the second part, or its successor in the trust, will not collect or authorize the collection from the party of the first part, its successors or assigns, or any great amount of interest on account of the income bonds, deposited with it as aforesaid, than at the rate of six per centum per annum, it being the intention of the parties hereto that the said income bonds shall be held in trust and used only for the purpose of giving to the holders of bonds, issued under this mortgage, and equality of lien with the holders of other outstanding income bonds, but with a rate of interest fixed at six per centum per annum.

That in the event of all the income bonds issued, under the said existing Second Mortgage being deposited with the party of the second part or its successor in the trust, it will forthwith use its best diligence to procure from the trustees of the said Second Mortgage, satisfaction and discharge upon the record of the said second mortgage, delivering to them if necessary, for that purpose the said income bonds duly cancelled and taking every step that may be necessary or proper, for the purpose of procuring the complete discharge of the lien of the said second mortgage to the end, that this mortgage may become a lien upon all the property hereinbefore mentioned, second only to the first purchase money mortgage executed to Jonh S. Kennedy and Samuel Sloan, trustees, and dated ths first day of November, 1879, but for this purpose the same income bond shall not be surrendered for

cancellation until the party of the second part is reasonably satisfied that all intervening liens have been discharged or secured to be discharged.

That the party of the second part or its successor in the trust, may take such legal advice and employ such assistance as may be necessary in its judgment to the proper discharge of its duties, and shall be entitled to receive just and reasonable compensation for all duties performed by it in the discharge of this trust and for all its reasonable expenses and disbursements, which compensation shall be paid by the party of the first part, its successors or assigns, and shall also be a lien upon and payable out of the funds coming into the hands of the party of the second part or its successor in the trust.

In witness whereof, the said International and Great Northern Railroad Company, party of the first part, in pursuance of the authority conferred upon it by law, and of a resolution adopted by two-thirds of all the stock of the said company at a meeting of its stockholders regularly called for that purpose, and held on the thirteenth day of June, 1881, and also a resolution of its board of directors, has caused this indenture to be subscribed in its name by its vice-president and assistant secretary and the corporate seal of said company to be affixed thereto, and the party of the second part for the purpose of testifying to its acceptance of the trust hereby created, as also in pursuance of a resolution of its board of directors, caused this indenture to be subscribed in its name by its president and secretary and its corporate seal to be affixed hereto, the day and year first above written.

INTERNATIONAL & GREAT NORTHERN RAILROAD CO.,
By T. W. PEARSALL, Vice-President.

Attest:
JACOB S. WETMORE, Asst. Sec'y. [SEAL.]

THE FARMER'S LOAN AND TRUST CO.,
By R. G. ROLSTON, President.

Attest:
GEO. P. FITCH, Secretary. [SEAL.]

STATE OF NEW YORK, } ss.
CITY AND COUNTY OF NEW YORK, }

Be it remembered, that on this twenty-second day of June, A. D. 1881, before me, John A. Garver, a Notary Public in and for the city, county and State of New York,

duly commissioned, qualified and acting, personally appeared Thomas W. Pearsall, the vice-president of the International & Great Northern Railroad Company, and Jacob S. Wetmorre, the assistant secretary of the same company, to me respectively personally known to be such, who being by me severally duly sworn, did depose and say that he, said Thomas W. Pearsall, resided in the city and State of New York, that he, said Jacob S. Wetmore, resided—Englewood, New Jersey, that he, said Thomas W. Pearsall, was the vice-president, and he, said Jacob S. Wetmore, was the assistant secretary of the said Company; that they know the corporate seal of said Company; that the seal affixed to the foregoing instrument is such corporate seal; that it was so affixed thereto by order of the board of directors of said company, and that they, the said Thomas W. Pearsall and Jacob S. Wetmore, signed their names thereto by the like order as vice-president and assistant secretary of said company, respectively, and they thereupon acknowledged to me respectively, that they had signed, sealed and delivered the said instrument bearing date on the fifteenth day of June, A. D. 1881, as for and to be the free and volunary act and deed of the International & Great Northern Railroad Company for the considerations, uses and purposes therein expressed.

In witness whereof, I have hereunto set my hand and affixed my official seal this twenty-second day of June, 1881.

[SEAL.] JOHN A. GARVER,
Notary Public, New York County.

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, }

Be it remembered, that on this 22d day of June, A. D. 1881, before me, John A. Garver, a Notary Public in and for the city, county and State of New York, duly commissioned, qualified and acting, personally appeared R. G. Rolston, the president of the Farmer's Loan and Trust Company, and George P. Fitch, the secretary of the same company, to me respectively personally known to be such, who being by me severally duly sworn, did depose and say that he, said R. G. Rolston, and he, said George P. Fitch, resided in the city and State of New York; that he, said R. G. Rolston, was the president, and he, said George P. Fitch, was the secretary of the said company,

that they know the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal; that it was so affixed thereto by order of the board of directors of said company, and that they, the said R. G. Rolston and George P. Fitch, signed their names thereto by the like order as president and secretary of said company, respectively, and they thereupon acknowledged to me respectively that they had signed, sealed and accepted the said instrument bearing date on the 15th day of June, A. D. 1881, as for and to be the free and voluntary act and deed of the Farmer's Loan and Trust Company for the considerations, uses and purposes therein expressed.

In witness whereof, I have hereunto set my hand and affixed my official seal this, twenty-second day of June, A. D. 1881.

[Seal] JOHN A. GARVER,
Notary Public, New York County.

Filed for record July 5, 1881, at 10 o'clock a. m., and recorded July 6, 1881, at 5:30 o'clock p. m.

THE STATE OF TEXAS, }
COUNTY OF HARRIS. }

I, C. F. Winkler, clerk of the county court in and for Harris county, State of Texas, do hereby certify that the foregoing is a true and correct copy of the the second mortgage executed by the International & Great Northern Railroad Company, acting by Thomas W. Pearsall, vice-president, and Jacob S. Wetmore, assistant secretary, to the Farmer's Loan and Trust Company of New York, as the same appears of record in Vol. 9, pages 754 to 765 inclusive, Records Mortgages Harris county, Texas.

Witness, C. F. Winkler, clerk of said court and the seal thereof, at office in the city of Houston, this, 11th day of March, A. D. 1893.

[Seal] C. F. WINKLER,
Clerk County Court, Harris County, Texas.

EXHIBIT "B."

H. S. S. H. B's. Nos. 1, 3, and 58.]

"RAILROAD COMMISSION OF TEXAS."

SEC.

1. Commission created; provides for three commissioners, how appointed, term of office; their qualifications, oath, salary.
2. Organizations; appointment of secretary, clerks, and experts, and to fix their salaries; name "Railroad Commission of Texas;" seal; office in capitol, etc., travelling expenses, how paid.
   (a.) May hold session at any place in State.
3. Vests power in Commission to adopt, regulate, and enforce rates; duties of railway companies as to depots.
   (a.) Power to classify freight; (b.) to fix rates.
   (d.) May make different rates for express companies.
   (e.) and (f.) Joint rates for connecting lines.
   (g.) When partial or special classification may be made.
   (h.) Power to change classification and rates.
   (i.) May hear and determine complaints.
   (k.) May establish passenger rates.
4. Notice to be given before establishment of rates, mode of procedure, and powers of Commission in such cases.
5. Rates conclusive until set aside by direct action. (See Secs. 6 and 7.)
6. When and where suit may be brought to hear complaint against Commission; such action shall have precedence; right of appeal.
7. Burden of proof rests upon plaintiff.
8. Schedules of classification and rates to be furnished each railroad; railroads shall post same for public inspection.
9. Complaint against railroads; how made and investigated; evidence therein when reduced to writing admissible upon trial of causes, when.
10. The right to inspect books and papers of any railroad company, etc.; penalty for refusal to permit such inspection.
11. Commission to ascertain cost of construction, equipment, etc., of railroads; bonds, indebtedness, etc.; amounts paid for salaries and wages; may employ experts; shall make report to Attorney-General and Comptroller.
12. Commission may propound questions to railroads to be answered under oath.
   (a.) Penalty for refusal to answer; may prescribe a system of bookkeeping.
   (b.) Shall make annual report to the Governor.
   (c.) Shall investigate all through freight rates: Interstate Commerce Commission to be notified, when.
13. Power to summon and compel the attendance of witnesses; fees of witnesses; compensation of sheriffs.
14. Extortion defined, and penalty therefor.
15. Discrimination defined and prohibited.
   (c.) Commission may allow special rates for long hauls, when; may make group rates.
   (h.) Free transportation, when allowed.
16. Punishment for false billing, classification, weight, etc.
17. Liability of railroads to persons and corporations injured by violations of this act; additional penalty for extortion or discrimination; venue
18. Penalty when not otherwise provided.
19. Penalties, how recovered; venue; attorneys' fees; rules of evidence; fines payable into State Treasury.
20. Authorized copies of classifications, rates, etc., admissible in evidence.
21. Duty of Commission to enforce provisions of this act; all suits between the State and railroads to have precedence.
   (a.) Contracts between connecting railroads to be approved by the Commission.
22. "Road," "railroad," "railroad companies," and "railroad corporations" defined.
   (a.) Applies to transportation between points in this State only, and not to street railways, etc.
   (b.) At least one passenger train a day required, Sundays excepted.
23. Penalties cumulative.
24. Emergency clause.

AN ACT to established a Railroad Commission for the State of Texas, whereby discrimination and extortion in railroad charges may be prevented, and reasonable freight and passenger tariffs may be established; to prescribe and authorize the making of rules and regulations to govern the Commission and the railroads, and afford railroad companies and other parties adequate remedies; to prescribe penalties for the violation of this act, and to provide means and rules for its enforcement.

SECTION 1. *Be it enacted by the Legislature of the State of Texas:* That a Railroad Commission is hereby created, to be composed of three persons to be appointed by the Governor, as follows: If the Legislature be then in session the Governor shall, upon the taking effect of this act, or as soon thereafter as practicable, by and with the advice of the Senate, if the Legislature then be in session, appoint said Commissioners; but if the Legeslature be not in session, the Governor shall make such appointments, and each Commissioner so appointed shall hold his office until the second Monday after the inauguration of the next succeeding Governor and until his sncccssor is appointed and qualified. Each succeeding Governor shall, on the second Monday after his inauguration, or as soon thereafter as practicable, appoint said Commissioners, who shall each hold his office until the second Monday after the inauguration of the next succeeding Governor and until his successor is appointed and qualified.

(a) The persons so appointed shall be resident citizens of this State, and qualified voters under the constitution and laws, and not less than twenty-five years of age. No person shall be appointed as such Commissioner who is directly or indirectly interested in any railroad in this Stats or out of it, or in any stock, bond, mortgage, security, or in the earnings of any such road; and if such Commissioner shall voluntarily become so interested his office shall become vacant; and if any Railroad Commissioner shall become so interested otherwise than voluntarily he shall within a reasonable time divest himself of such interest; failing to do this, his office shall become vacant.

(b) No Commissioner hereunder shall hold any other office under the government of the United States or of this State or of any other State government; and shall not while such Commissioner engage in any occupation or business inconsistent with his duties as such Commissioner.

(c) The Governor shall fill all vacancies in the office of Commissioner by appointment, and the persons so ap-

pointed shall fill out the unexpired term of his predecessor.

(d) Before entering upon the duties of his office, each of said Commissioners shall take and subscribe to the oath of office prescribed in the constitution, and shall, in addition thereto, swear that he is not directly or indirectly interested in any railroad, nor in the bonds, stock, mortgages, securities, contracts, or earnings of any railroad, and that he will, to the best of his ability, faithfully and justly execute and enforce the provisions of this act and all laws of this State concerning railroads, which oath shall be filed with the Secretary of State.

(e) Each of said Commisioners shall receive an annual salary of $4000, payable in the same manner that salaries of other State officers are paid.

SEC. 2. The Commissioners appointed shall meet at Austin and organize and elect one of their number chairman of said Commission. A majority of said Commissioners shall constitute a quorum to transact business. Said Commission may appoint a secretary at a salary of not more than $2000 per annum, and may appoint not more than two clerks at a salary of not more than $1500 per annum each, and such other persons as experts as may be necessary to perform any duty that may be required of them by this act. The secretary shall keep full and correct minutes of all the transactions and proceedings of said Commission, and perform such duties as may be required by the Commission. The Commission shall have power to make all needful rules for their government and for their proceedings. They shall be known collectively as "Railroad Commission of Texas," and shall have a seal, a star of five points, with the words "Railroad Commission of Texas," engraved thereon. They shall be furnished with an office in the capitol at Austin, and with necessary furniture, stationery, supplies, and all necessary expenses, to be paid for on the order of the Governor.

The Commissioners, secretary, and clerks shall be entitled to receive from the State their actual necessary traveling expenses, which shall include the cost only of transportation while traveling on the business of the Commission, to be paid out on the order of the Governor upon an itemized statement thereof, sworn to by the party who incurred the expenses and approved by the Commission.

(a) Said Commission may hold sessions at any place

in this State when deemed necessary to facilitate the discharge of their duties.

SEC. 3. The power and authority is hereby vested in the Railroad Commission of Texas, and it is hereby made its duty, to adopt all necessary rates, charges, and regulations to govern and regulate railroad freight and passenger tariffs, the power to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State, and to enforce the same by having the penalties inflicted as by this act prescribed through proper courts having jurisdiction.

(a.) The said Commission shall have power, and it shall be its duty, to fairly and justly classify and subdivide all freight and property of whatsoever character that may be transported over the railroads of this State into such general and special classes or subdivisions as may be found necessary and expedient.

(b.) The Commission shall have power, and it shall be its duty, to fix to each class or subdivision of freight a reasonable rate for each railroad subject to this act for the transportation of each of said classes and subdivisions.

(c.) The classifications herein provided for shall apply to and be the same for all railroads subject to the provisions of this act.

(d.) The said Commission may fix different rates for different railroads and for different lines under the same management, or for different parts of the same lines if found necessary to do justice, and may make rates for express companies different from the rates fixed for railroads.

(e.) The said Commission shall have power, and it shall be its duty, to fix and establish for all or any connecting lines of railroad in this State reasonable joint rates of freight charges for the various classes of freight and cars that may pass over two or more lines of such railroads.

(f.) If any two or more connecting railroads shall fail to agree upon a fair and just division of the charges arising from the transportation of freights, passengers, or cars over their lines, the Commission shall fix the pro rata part of such charges to be received by each of said connecting lines.

(g.) Until the Commission shall make the classifications and schedules of rates as herein provided for, and afterwards if they deem it advisable, they may make partial or special classifications for all or any of the railroads subject hereto, and fix the rates to be charged by such roads therefor; and such classifications and rates shall be put into effect in the manner provided for general classifications and schedules of rates.

(h.) The Commission shall have power, and it shall be its duty, from time to time, to alter, change, amend, or abolish any classification or rate established by it when deemed necessary; and such amended, altered, or new classifications or rates shall be put into effect in the same manner as the original.

(i.) The Commission may adopt and enforce such rules, regulations, and modes of procedure as it may deem proper to hear and determine complaints that may be made against the classifications or the rates, the rules, regulations, and determinations of the Commission.

(j.) The Commission shall make reasonable and just rates of charges for each railroad subject hereto for the use or transportation of loaded or empty cars on its road; and may establish for each railroad or for all railroads alike reasonable rates for the storing and handling of freight and for the use of cars not unloaded after fory-eight hours' notice to the consignee, not to include Sundays.

(k.) The Commission shall make and establish reasonable rates for the transportation of passengers over each or all of the railroads subject hereto, which rates shall not exceed the rates fixed by law. The Commission shall have power to prescribe reasonable rates, tolls, or charges, for all other services performed by any railroad subject hereto.

(l.) It shall be the duty of each and every railway subject to this act to provide and maintain adequate, comfortable, and clean depots and depot buildings at its several stations for the accommodation of passengers, and said depot buildings shall be kept well lighted and warmed for the comfort and accommodation of the traveling public; and all such roads shall keep and maintain adequate and suitable freight depots and buildings for the receiving, handling, storing, and delivering of all freight handled by such roads; *Provided*, that this shall not be construed as repealing any existing laws on the subject.

SEC. 4. Before any rates shall be established under this act, the Commission shall give the railroad company to be affected thereby ten days notice of the time and place when and where the rates shall be fixed; and said railroad company shall be entitled to be heard at such time and place, to the end that justice may be done; and it shall have process to enforce the attendance of its witnesses. All process herein provided for shall be served as in civil cases.

(a.) The Commission shall have power to adopt rules to govern its proceedings, and to regulate the mode and manner of all investigations and hearings of railroad companies and other parties before it, in the establishment of rates, orders, charges, and other acts required of it under this law; *Provided*, no person desiring to be present at any such investigations by said Commission shall be denied admission.

(b.) The Chairman and each of the Commissioners for the purposes mentioned in this act, shall have power to administer all oaths, certify to all official acts, and to compel the attendance of witnesses and the production of papers, way bills, books, accounts, documents, and testimony, and to punish for contempt as fully as is provided by law for the district or county court.

SEC. 5. In all actions between private parties and railway companies brought under this law, the rates, charges, orders, rules, regulations, and classifications prescribed by said Commission before the institution of such action shall be held conclusive, and deemed and accepted to be reasonable, fair and just, and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for that purpose in the manner prescribed by sections 6 and 7 hereof.

SEC. 6. If any railroad company or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order: act, or regulation adopted by the Commission, such dissatisfied company or party may file a petition setting forth the particular cause or causes of objection to such decision, act, rate, rule, charge, classification, or ordsr, or to either or all of them, in a court of competent jurisdiction in Travis county, Texas, against said Commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other

civil causes in said court. Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court at either of its term, and said action so appealed shall have precedence in said appellate court of all causes of a different character therein pending; *Provided*, that if the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days notice.

SEC. 7. In all trials under the foregoing section the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts, or charges complained of are unreasonable and unjust to it or them.

SEC. 8. The said Commission shall, so soon as the classifications and schedules of rates herein provided for are prepared by them, furnish each railroad subject to the provisions of this act with a complete schedule in suitable form, showing the classification of freight made by them and the rates fixed by said Commission to be charged by such road for the transportation of each class of freight, and shall cause a certified copy of such clasification and schedule of rates to be delivered to each of said railroads at its principal office in this State, if it has such office in this State, and if not, then to any agent of said company in this State, which said schedule, rules, and regulations shall take effect at the date which may be fixed by said Commission, not less than twenty days. Each of said railroad companies shall cause said schedules to be printed in type of a size not less than pica, and shall have the same posted up in a conspicuous place at each of its depots, so as to be inspected by the public. Said Commission may at any time abolish, alter, or in any manner amend the said schedules, or abolish or amend any such regulations, and in that event certified copies of the schedules, rules, or regulations, showing the changes therein, shall be delivered to each road as herein specified. In all cases where the rates shall not have been fixed by the Commission, no changes shall be made except after ten days notice to and consent of the Commission.

SEC. 9. Any person, firm, coporation, or association, or any mercantile, agricultural, or manufacturing association, or any body politic, or municipal organization, com-

plaining of anything done or omitted to be done by any railroad subject hereto, in violation of any law of this State or the provisions of this act [for which penalty is provided], may apply to said Commission in such manner and under such rules as the Commission may prescribe; whereupon, if there shall appear to the Commission to be any reasonable grounds for investigating such complaint, it shall give at least five days notice to such railroad of such charge and complaint, and call upon said road to answer the same at a time and place to be specified by the Commission. The Commission shall investigate and determine such complaint under such rules and modes of procedure as it may adopt. If the Commission find that there has been a violation, it shall determine if the same was willful; if it finds that such violation was not willful, it may call upon said road to satisfy the damage done to the complainant thereby, stating the amount of such damage, and to pay the cost of such investigation. and if the said railroad shall do so within the time specified by the Commission there shall be no prosecution by the State; but if said railroad shall not pay said damage and cost within the time specified by said Commission, or if the Commission find such violation to be willful, it shall institute proceedings to recover the penalty for such violation and the cost of such investigation. All such complaints shall be made in the name of the State of Texas upon the relation of such complaint. All evidence taken before said Commission in the investigation of any such complaint, when reduced to writing and signed and sworn to by the witness, may be used by either party—the State, complainant, or the railroad company—in any proceeding against such railroad involving the same subject matter: *Provided further*. that the Commissioners may require the testimony so taken before them to be reduced to writing when they may deem it necessary, or when requested to do so by either party to such proceedings, and a certified copy, under the hand and seal of said Commission, shall be admissible in evidence upon the trial of any cause or proceeding growing out of the same transaction against such railroad, involving the same subject matter and between the same parties. The provisions of this section shall not abridge nor affect the right of any person to sue for any penalty that may be due him under the provisions of this act or any other law of this State.

SEC. 10. The Commissloners, or either of them, or such persons as they employ therefor, shall have the right, at such times as they may deem necessary to inspect the books and papers of any railroad company, and to examine under oath any officer, agent, or employe of such railroad in relation to the business and affairs of the same. If any railroad shall refuse to permit the Commissioners or either of them, or any person authorized thereto to examine its books and papers, such railroad company shall, for each offeuse, pay to the State of Texas not less $125 nor more than $500 for each day it shall so fail or refuse: *Provided*, that any person other than one of said Commissioners who shall make any such demands shall produce his authority, under the hand and seal of said Commission, to make such inspection.

(a.) Any officer, agent, or employe of any railroad company who shall, upon proper demand, fail or refuse to exhibit to the Commissioners, or either of them, or any person authorized to investigate the same, any book or paper of such railroad company which is in the possession or under the control of such officer, agent, or employe, shall be deemed guilty of a misdemeanor, and upon conviction in any court having jurisdiction thereof, shall be fined for each offense a sum not less than $125 and not [to] exceed $500.

SEC. 11. The Commission shall ascertain as early as practicable the amount of money expended in construction and equipment per mile of every railway in Texas; the amount of money expended to procure the right of way, and the amount of money it would require to reconstruct the road bed, track, depots and transportation, and to replace all the physical properties belonging to the railroad. It shall also ascertain the outstanding bonds, debentures, and indebtedness and the amount respectively thereof, when issued and rate of interest, when due, for what purpose issued, how used, to whom issued, to whom sold, and the price in cash, property, or labor, if any, received therefor, what became of the proceeds, by whom the indebtedness is held, the amount purporting to be due thereon, the floating indebtedness of the company, to whom due, and his address, the credits due on it, the property on hand belonging to the railroad company, and the judicial or other sales of said road, its property or franchises, and the amounts purporting to have been paid,

and in what manner paid therefor. The Commission shall also ascertain the amounts paid for salaries to the officers of the railroad, and the wages paid its employes. For the purpose in this section named, the Commission may employ sworn experts to inspect and assist them when needed, and from time to time, as the information required by this section is obtained, it shall communicate the same to the Attorney-General by report, and file a duplicate thereof with the Comptroller for public use, and said information shall be printed from time to time in the annual report of the Commission.

SEC. 12. The said Commission shall cause to be prepared suitable blanks with questions calculated to elicit all information concerning railroads, and as often as it may be necessary furnish said blanks to each railroad company. Any railroad company receiving from the Commission any such blanks, shall cause said blanks to be properly filled out so as to answer fully and correctly each question therein propounded, and in case they are unable to answer any question, they shall give a satisfactory reason for their failure; and the said answers, duly sworn to by the proper officer of said company, shall be returned to said Commission at its office in the city of Austin, within thirty days from the receipt thereof.

(a.) If any officer or employe of a railroad company shall fail or refuse to fill out and return any blanks as above required, or fail or refuse to answer any questions therein propounded, or give a false answer to any such question, where the fact enquired of is within his knowledge, or shall evade the answer to any such questions, such person shall be guilty of a misdemeanor, and shall on conviction thereof be fined for each day he shall fail to perform such duty after the expiration of the time aforesaid, a penalty of $500, and the Commission shall cause a prosecution therefor in the proper court; and a penalty of a like amount shall be recovered from the company when it appears that such person acted in obedience to its direction, permission or request in his failure, evasion or refusal. Said Commission shall have the power to prescribe a system of bookkeeping to be observed by all the railroads subject hereto, under the penalties prescribed in this section.

(b.) The said Commission shall make and submit to the Governor annual reports containing a full and com-

plete account of the transactions of their office, together with the information gathered by such Commission as herein required, and such other facts, suggestions and recommendations as may be by them deemed necessary, which reports shall be published as the reports of the heads of departments.

(c.) The said Commission shall have power, and it is hereby made its duty, to investigate all through freight rates on railroads in Texas; and when the same are, in the opinion of the Commission, excessive or levied or laid in violation of the interstate commerce law, or the rules and regulations of the Interstate Commerce Commission, the officials of the railroads are to be notified of the facts and requested to reduce them or make the proper corrections, as the case may be. When the rates are not changed, or the proper corrections are not made according to the request of the Commission, the latter is instructed to notify the Interstate Commerce Commission and to apply to it for relief.

SEC. 13. The said Commission, in making any examination or investigation provided in this act, shall have power to issue subpœnas for the attendance of witnesses by such rules as they may prescribe. Each witness who shall appear before the Commission by order of the Commission, at a place outside of the county of his residence, shall receive for his attendance $1 per day and three cents per mile, traveled by the nearest practicable route, in going to and returning from the place of meeting of said Commission, which shall be ordered paid by the Comptroller of Public Accounts upon the presentation of proper vouchers, sworn to by such witness, and approved by the chairman of the Commission; *provided*, that no witness shall be entitled to any witness fees or mileage who is directly or indirectly interested in any railroad in this State or out of it, or who is in any wise interested in any stock, bond, mortgage, security or earnings of any such road, or who shall be the agent or employe of such road, or an officer thereof, when summoned at the instance of such railroad; and no witness furnished with free transportation shall receive pay for the distance he may have traveled on such free transportation. In case any witness shall fail or refuse to obey such subpœna, said Commission may issue an attachment for said witness, directed to any sheriff or any constable of the State of

Texas, and compel him to attend before the Commission and give his testimony upon such matters as shall be lawfully required by them. If a witness, after being duly summoned, shall fail or refuse to attend or to answer any question propounded to him, and which he would be required to answer if in court, the Commission shall have power to fine and imprison such witness for contempt, in the same manner that a judge of the district court might do under similar circumstances. The claim that any such testimony may tend to criminate the person giving it shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding; *provided*, the Commission shall in all cases have the right in its discretion to issue proper process and take depositions instead of compelling personal attendance of witnesses. The sheriff or constable executing any process issued under the provisions of this section or under any other provisions of this bill, shall receive such compensation as may be allowed by the Commission, not to exceed fees as now prescribed by law for similar services.

SEC. 14. If any railroad company subject to this act, or its agent or officer, shall hereafter charge, collect, demand or receive from any person, company, firm or corporation a greater rate, charge, or compensation than that fixed and established by the Railroad Commission for the transportation of freight, passengers, or cars, or for the use of any car on the line of its railroad, or any line operated by it, or for receiving, forwarding, handling, or storing any such freight or cars, or for any other service performed or to be performed by it, such railroad company and its said agent and officer shall be deemed guilty of extortion, and shall forfeit and pay to the State of Texas a sum not less than $100 nor more than $5000.

SEC. 15. If any railroad subject hereto, directly or indirectly, or by any special rate, rebate, drawback, or other device, shall charge, demand, collect, or receive from any person, firm or corporation, a greater or less compensation for any service rendered or to be rendered by it than it charges, demands, collects or receives from any other person, firm or corporation for doing a like and contemporaneous service, such railroad shall be deemed

guilty of unjust discrimination, which is hereby prohibited.

(a.) It shall also be an injust discrimination for any such railroad to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or to subject any particular description of traffic to any undue or unreasonable prejudice, delay, or disadvantage in any respect whatsoever.

(b.) Every railroad company which shall fail or refuse, under such regulations as may be prescribed by the Commission, to receive and transport without delay or discrimination the passengers, tonnage and cars, loaded or empty, of any connecting line of railroad, and every railroad which shall, under such regulations as may be prescribed by the Commission, fail and refuse to transport and deliver without delay or discrimination any passengers, tonnage, or cars, loaded or empty, destined to any point on or over the line of any connecting line of railroad, shall be deemed guilty of unjust discrimination; *provided*, perishable freights of all kinds and live stock shall have precedent of shipment.

(c.) It shall also be an unjust discrimination for any railroad subject hereto to charge or receive any greater compensation in the aggregate for the transportation of like kind of property or passengers for a shorter than for a longer distance over the same line; *provided*, that upon application to the Commission, any railroad may in special cases, to prevent manifest injury, be authorized by the Commission to charge less for longer than for shorter distances for transporting persons and property, and the Commission shall from time to time prescribe the extent to which such designated railroad may be relieved from the operations of this provision; *provided*, that no manifest injustice shall be imposed upon any citizen at intermediate points; *provided, further*, that nothing herein shall be so construed as to prevent the Commission from making what are known as "group rates" on any line or lines of railroad in this State.

(d.) Any railroad company violating any provision of this section shall be deemed guilty of unjust discrimination, and shall for each offense pay to the State of Texas a penalty of not less than five hundred dollars nor more than five thousand dollars.

(h.) Nothing herein shall prevent the carriage, storage, or handling of freight free or at reduced rates for the State, or for any city, county or town government, or for charitable purposes, or to and from fairs and expositions for exhibition thereof, or the free carriage of destitute and indigent persons, or the issuance of mileage or excursion passenger tickets; nor to prevent railroads from giving free transportation to ministers of religion, or free transportation to the inmates of hospitals, eleemosynary and charitable institutions, and to the employes of the agricultural and geological departments of this State, or to peace officers of this State; and nothing herein shall be construed to prevent railroads from giving free transportation to any railroad officers, agents, employes, attorneys, stockholders, or directors, or to the Railroad Commissioners, their secretary, clerks and employes herein provided for, or to any person not prohibited by law; provided, they, or either of them, shall not receive from the State mileage when such pass is used.

SEC. 16. Any officer or agent of any railroad subject to this act who, by means of false billing, false classification, false weight, or by any other device, shall suffer or permit any person or persons to obtain transportation for property at less than the regular rates then inforce on such railroad, or who by means of false billing, false classification, false weighing, or by any device whatever shall charge any person, firm, or corporation more for the transportation of property than the regular rates, shall be guilty of a misdemeanor, and on conviction thereof fined in a sum of not less than $100 nor more than $1000.

SEC. 17. In case any railroad subject to this act shall do, cause to be done, or permit to be done any matter, act, or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter or thing herein required to be done by it, such railroad shall be liable to the person or persons, firm or corporation injured thereby for the damages sustained in consequence of such violation; and in case said railroad company shall be guilty of extortion or discrimination as by this act defined, then, in addition to such damages, such railroad shall pay to the person, firm, or corporation injured thereby a penalty of not less than $125 nor more than $500 to be recovered in any court of competent jurisdiction in any county into

or through which such railroad may run; provided, that such road may plead and prove as a defense to the action for said penalty that such overcharge was unintentionally and innocently made through a mistake of fact; *Provided*, that any such recovery as herein provided shall in no manner affect a recovery by the State of a penalty provided for such violation.

SEC. 18. If any railroad, as aforesaid, shall willfully violate any other provisions of this act, or shall do any other act herein prohibited, or shall fail or refuse to perform any other duty enjoined upon it for which a penalty has not herein been provided, for every such act of violation it shall pay the State of Texas a penalty of not more than five thousand dollars.

SEC. 19. All of the penalties herein provided, except as provided in Section 17, shall be recovered and suits thereon shall be brought in the name of the State of Texas in the proper court having jurisdiction thereof in Travis County, or in any county to or through which such railroad may run, by the Attorney-General or under his direction, and the attorney bringing such suit shall receive a fee of $50 for each penalty recovered and collected by him, and 10 per cent. of the amount collected, to be paid by the State. In all suits arising under this act the rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the State under this act shall be paid into the treasury of the State.

SEC. 20. Upon application of any person the Commission shall furnish certified copies of any classification, rates, rules, regulations, or orders, and such certified copies, or printed copies published by authority of the Commission, shall be admissible in evidence in any suit and sufficient to establish the fact that any charge, rate, rule, order, or classifications therein contained and which may be in issue in the trial is the official act of the Commission. A substantial compliance with the requirements of this act shall be sufficient to give effect to all the classifications, rates, charges, rules regulations, requirements, and orders made and established by the Commission, and none of them shall be declared inoperative for any omission of a technical matter in the performance of such act.

SEC. 21. It is hereby made the duty of such Railroad

Commission to see that the provisions of this act and all laws of this State concerning railroads are enforced and obeyed, and that violations thereof are promptly prosecuted, and penalties due the State therefor recovered and collected. And said Commission shall report all such violations, with the facts in their possession, to the Attorney-General or other officer charged with the enforcement of the laws, and request him to institute the proper proceedings; and all suits between the State and any railroad shall have precedence in all courts over all other suits pending therein.

(a.) It shall be the duty of the Commission to investigate all complaints against railroad companies subject hereto, and to enforce all laws of this State in reference to railroads. But any two connecting railroads may enter into a contract whereby any part or all of the passengers, freight, or cars, empty or loaded, hauled or transported by one and destined to points on orbeyond the line of the other shall be delivered to, received and transported by the other; which contract, however, shall be submitted to the Railroad Commission for examination and approval, and when so approved shall be binding; but if the said contract be not approved by the Commission, the same shall be void; provided, that any connecting line delivering freight to the owner or consignee of such freight may be sued by the owner thereof in the county where the freight is delivered for any damage that may be done to such freight in its transportation.

SEC. 22. The terms "road," "railroad," "railroad companies," and "railroad corporations," as used herein, shall be taken to mean and embrace all corporations, companies, individuals, and associations of individuals, their lessees or receivers (appointed by any court whatsoever), that may now or hereafter own, operate, manage or control any railroad or part of a railroad in this State, and all such corporations, companies, and associations of individuals, their lessees or receivers, as shall do the business of common carriers on any railroad in this State.

(a.) The provisions of this act shall be construed to apply to and affect only the transportation of passengers, freight, and cars between points within this State; and this act shall not apply to street railways nor suburban or belt lines of railways in or near cities and towns.

(b.) It shall be the duty of the Commission to see that

upon every railroad and branch of same carrying passengers for hire in this State shall run at least one train a day (Sundays excepted), upon which passengers shall be hauled, and the Commission shall have no power to relax this provision.

SEC. 23. This act shall not have the effect to release or waive any right of action by the State or any person for any right, penalty, or forfeiture which may have arisen or may hereafter arise under any law of this State; and all penalties accruing under this act shall be cumulative of each other, and a suit for or recovery of one shall not be a bar to the recovery of any other penalty; and all laws and parts of laws in conflict with this act are hereby repealed.

SEC. 24. The fact that there is no adequate and sufficient law for the regulation of railroads in the transportation of freight and passenger traffic, and the near approach of the close of the present session, creates an imperative public necessity and an emergency, necessitating the suspension of the constitutional rule requiring bills to be read on three several days, and it is so suspended, and that this act take effect and be in force from and after its passage, and it is so enacted.

[NOTE.—The foregoing act originated in the House and passed the same by two-thirds vote, yeas, 92, nays 5; and passed the Senate by two-thirds vote, yeas 26, nays 0.]

Approved, April 3, 1891.

THE STATE OF TEXAS,
DEPARTMENT OF STATE.

I, Geo. W. Smith, Secretary of State of the State of Texas, do hereby certify that the foregoing is a true and correct copy of the original enrolled H. S. S. H. Bs. Nos. 1, 3, and 58, entitled "An Act to establish a railroad commission for the State of Texas, whereby discrimination and exortion in railroad charges may be prevented, and reasonable freight and passenger tariffs may be established; to prescribe and authorize the making of rules and regulations to govern the commission and the railroads, and afford railroad companies and other parties adequate remedies; to prescribe penalties for the violation of this act, and to provide means and rules for its enforcement," approved April 3, 1891, now on file in this Department.

Witness my official signature and the seal of State, affixed at the city of Austin, this 6th day of April, A. D. 1891.

(Seal)

GEO. W. SMITH,
Secretary of State.

IN THE

UNITED STATES CIRCUIT COURT.

For the Western Dtstrict of Texas.

IN THE FIFTH CIRCUIT. IN EQUITY. No. 187.

THE FARMERS LOAN AND TRUST COMPANY,
TRUSTEE, COMPLAINANT.

Against

JOHN H. REAGAN ET AL., DEFENDANTS.

EXHIBIT "C," TO BILL OF COMPLAINT.

Filed April 30, 1892.

B. G. DUVAL, *Clerk.*
By D. H. HART, *Deputy*

EXHIBIT "C."

COMMODITY TARIFFS AND CIRCULARS ISSUED BY THE RAILROAD COMMISSION OF TEXAS.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, August 13, 1891.

Due and legal notice as provided by the act of the Twenty-second Legislature of Texas, approved April 3, 1891, establishing a railroad commission for the State of

Texas and defining its duties, powers, etc., having been given by the Railroad Commission of Texas to each railroad company in said State that said Commission would on July 6, 1891, begin the work of classifying and fixing the rates of transportation on all freight and property of every kind to be transported over railroads from point to point within said State, and said work would continue from day to day until finished, and the legally authorized agents and representatives of said railroad companies, in pursuance of said notice, having appeared before said Commission at its session and had a full hearing upon said subjects, and said Commission having fully considered the subject of establishing rates on all the commodities named in the subjoined Commodity Tariff No. 1, do fix and establish the rates therein set forth, which said rates go into effect on all railroads in the State of Texas on shipments of freight herein named from and to points within said State on and after September 9, 1891, with the exceptions and modifications herein specified as to certain railroads and parts of railroads, and remain in force and effect until canceled by the said Commission.

JOHN H. REAGAN, *Chairman*,
W. P. McLEAN,
L. L. FOSTER, *Commissioners*.

COMMODTY TARIFF NO. 1.

Issued by the Railroad Commission of Texas and applying on the following commodities:

Wheat, corn, rye, barley, oats, bran, mill feed and mill stuffs, car loads, straight or mixed; minimum weight 20,000 pounds.

Flour and meal in sacks or barrels and hominy and grits in car loads, straight or mixed; minimum weight 20,000 pounds.

Hay in car loads, minimum 17,000. Narrow gauge roads 12,000 pounds.

Salt in car loads, minimum weight 20,000 pounds.

Effective September 9, 1891. Cancel all existing tariffs on above named commodities.

RATES IN CENTS PER HUNDRED POUNDS.

DISTANCE.	Wheat, Corn, Rye, Barley, Oats, Bran, Millfeed, Millstuff and Hay.	Flour & meal in sacks or bbls., Hominy & Grits.	Salt in sacks or barrels, or in bulk, or Rock Salt.
5 miles and under.....	5	5	6
10 miles and over 5	5	5	6
15 miles and over 10	5½	5½	6½
20 miles and over 15	6	7	7
25 miles and over 20	6	7	7
30 miles and over 25	6½	7½	7½
35 miles and over 30	6½	7½	7½
40 miles and over 35	7	8	8
45 miles and over 40	7½	8½	8½
50 miles and over 45 ...	8	9	8½
55 miles and over 50	8	9	9
60 miles and over 55	8½	9½	9
65 miles and over 60	8½	9½	9½
70 miles and over 65	9	10	9½
75 miles and over 70	9	10	10
80 miles and over 75	9½	10½	10
85 miles and over 80	9½	10½	11
90 miles and over 85	10	11	11
95 miles and over 90	10	11	11½
100 miles and over 95	10½	11½	11½
105 miles and over 100	10½	12	12
110 miles and over 105	11	12½	12
115 miles and over 110	11	12½	12½
120 miles and over 115	11½	13	12½
125 miles and over 120	11½	13	13
130 miles and over 125	12	13½	13
135 miles and over 130	12½	14	13
140 miles and over 135	12½	14	13
145 miles and over 140	13	14½	13½
150 miles and over 145	13	14½	13½
155 miles and over 150	13¼	15	13½
160 miles and over 155	14	15½	13½
165 miles and over 160	14	15½	14½
170 miles and over 165	14½	16	14½
175 miles and over 170	14½	16	14½
180 miles and over 175	15	16	14½
185 miles and over 180	15	16½	15
190 miles and over 185	15	16½	15
195 miles and over 190	15½	17	15

Rates in Cents per Hundred Pounds—*Continued.*

DISTANCE.	Wheat, etc.	Flour, etc.	Salt, etc.
200 miles and over 195	15½	17	15½
210 miles and over 200	16	17½	15½
220 miles and over 210	16	17½	15½
230 miles and over 220	16	17½	16
240 miles and over 230	16½	18½	16
250 miles and over 240	16½	18½	16½
260 miles and over 250	16½	18½	16½
270 miles and over 260	16½	18½	17
280 miles and over 270	17	19	17
290 miles and over 280	17	19	17½
300 miles and over 290	17	19	17½
310 miles and over 300	17	19	18
320 miles and over 310	17½	19½	18
330 miles and over 320	17½	19½	18½
340 miles and over 330	17½	19½	18½
350 miles and over 340	19½	19½	19
360 miles and over 350	18	20	19
370 miles and over 360	18	20	19½
380 miles and over 370	18	20	19½
390 miles and over 380	18	20	20
400 miles and over 390	18 1-2	20 1-2	20
420 miles and over 400	19	21	20 1-2
440 miles and over 420	20	22	21
460 miles and over 440	21	23	21 1-2
480 miles and over 460	22 1-2	25	22
500 miles and over 480	25	27	22
All distances over 500	25	27	22

At all points where railroads intersect, or meet at the same town or city from which freight shall be carried to the same point of destination, the longer line or lines of road may charge rates of freight not lower than that fixed for through freights on the shortest lines between such points, without affecting the rates to be charged at intermediate points on said longest line or lines of road.

When any freight included in this tariff shall be carried over two or more railroads or parts of railroads not under the same control, the rate shall be determined by adding together the charges on the several railroads or parts of railroads, as prescribed in this tariff, for the respective distance such freight is carried over each and

deducting from the same 20 per cent.; provided, that the rate thus obtained shall in no case exceed the maximum rate provided for in the tariff. The joint rate thus ascertained may be divided between roads over which freight is transported in such proportion as may be agreed upon between such roads.

All connecting railroads which are under the management and control by lease, ownership or otherwise of one and the same company shall for the purpose of transportation, in applying this tariff, be considered as constituting but one and the same road, and the rates shall be computed as upon parts of one and the same road.

The following named railroads may, in their discretion, add 10 per cent. to the rates herein prescribed. Railroads availing themselves of this privilege must file with the Commission a list of the stations at which the increased rate will be applied, and also instruct their agents at such stations to add 10 per cent. to the rates prescribed in this tariff:

Fort Worth & Denver City Railway between stations west of Childress to and including Texline, and the Washburn and Panhandle Valley Branch; Wichita Valley Railroad; Galveston, Harrisburg & San Antonio Railroad between stations west of San Antonio to and including El Paso, Spofford Junction to Eagle Pass inclusive; Gulf, West Texas & Pacific Railroad; Houston, East & West Texas Railroad; New York, Texas & Mexican Railroad; Texas & Pacific Railroad west of Colorado City to and including El Paso; Southern Kansas Railroad; Texas, Sabine Valley & Northwestern Railway; Texas Western Railroad; International & Great Northern Railroad between stations west of San Antonio to and including Laredo, and Houston and Columbia Tap; Missouri, Kansas & Texas Railroad between Trinity and Colmesneil; Aransas Pass Railroad between Skidmore and Kleberg and San Antonio and Kerrville.

This tariff does not apply on the following railroads: Brownsville & Gulf; Galveston & Western; Lake Creek, Paris & Great Northern; Paris, Marshall & Sabine Valley; Rio Grande; Rio Grande & El Paso; Rio Grande & Eagle Pass; Texarkana & Fort Smith; Texas Trunk; Pecos Valley; Kildare & Linden.

I hereby certify that the above is a true and correct

copy of Commodity Tariff No. 1, with the modifications and exceptions thereto and the rules governing the same, this day adopted by the Railroad Commission of the State of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 13th day of August, 1891.

J. J. ARTHUR, *Secretary.*

(See Circulars 4, 5, 11, 15, 17, 20, 35, 44, *Post.*)

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, August 22, 1891.

Due and legal notice as provided by the Act of the Twenty-second Legislature of Texas, approved April 3, 1891, establishing a Railroad Commission for the State of Texas, and defining its duties, powers, etc., having been given by the Railroad Commission of Texas to each railroad company in said State, that the said Commission would, on July 6, 1891, begin the work of classifying and fixing rates of transportation on all freight and property of every kind, to be transported over railroads from points to points within said State, and that said work would be continued from day to day until finished, and the legally authorized agents and representatives of said railroad companies, in pursuance of said notice, having appeared before said Commission at its session, and had a full hearing upon said subjects, and said Commission having fully considered the subject of establishing rates on the commodities named in subjoined Commodity Tariff No. 2, do fix and establish the rates therein set forth, which said rates shall go into effect on all railroads in the State of Texas, on shipments of *cotton* from and to points within said State, on and after the 14th day of September, 1891, together with the regulations in relation thereto herein prescribed, and remain in force and effect until canceled by said Commission.

JOHN H. REAGAN, *Chairman.*
W. P. MCLEAN,
L. L. FOSTER, *Commissioners.*

COMMODITY TARIFF NO. 2.

Issued by the Railraad Commission of Texas, applying on Cotton in Bales, compressed and uncompressed, actual weight in any quantity. Between all stations in Texas.

Effective September 14, 1891.

RATES IN CENTS PER HUNDRED POUNDS.

Distances.	Rates.	Distances.	Rates.
10 miles and under	10	130 miles and over 125 miles	44
15 miles and over 10 miles	12	135 miles and over 130 miles	45
20 miles and over 15 miles	14	140 miles and over 135 miles	46
25 miles and over 20 miles	16	145 miles and over 140 miles	47
30 miles and over 25 miles	18	150 miles and over 145 miles	48
35 miles and over 30 miles	20	155 miles and over 150 miles	49
40 miles and over 35 miles	22	160 miles and over 155 miles	50
45 miles and over 40 miles	24	165 miles and over 160 miles	51
50 miles and over 45 miles	26	170 miles and over 165 miles	52
55 miles and over 50 miles	28	175 miles and over 170 miles	53
60 miles and over 55 miles	30	180 miles and over 175 miles	54
65 miles and over 60 miles	31	185 miles and over 180 miles	55
70 miles and over 65 miles	32	190 miles and over 185 miles	56
75 miles and over 70 miles	33	195 miles and over 190 miles	57
80 miles and over 75 miles	34	200 miles and over 195 miles	58
85 miles and over 80 miles	35	225 miles and over 200 miles	59
90 miles and over 85 miles	36	250 miles and over 225 miles	60
95 miles and over 90 miles	37	300 miles and over 250 miles	61
100 miles and over 95 miles	38	350 miles and over 300 miles	62
105 miles and over 100 miles	39	400 miles and over 350 miles	63
110 miles and over 105 miles	40	450 miles and over 400 miles	64
115 miles and over 110 miles	41	500 miles and over 450 miles	65
120 miles and over 115 miles	42	Over 500 miles	65
125 miles and over 120 miles	43		

Fractions of less than 100 pounds must be charged at the rate per pound fixed for 100 pounds.

No additional charge allowed when cotton passes over more than one road.

On account of water competition roads are authorized to charge a rate not less than 10 cents per 100 pounds on cotton from Houston to Galveston.

At all points where railroads intersect or meet at the same town or city from which freight shall be carried to the same point or destination, the longer line or lines of road may charge rates of freight not lower than that fixed for through freight on the shortest line between such points without affecting the rates to be charged at

intermediate points on said longest line or lines of road.

For the purpose of compressing, cotton may be concentrated at any compress in the direction in which it is to be shipped, but where it is shipped back out of the direction of its destination for the purpose of being compressed, it must be compressed at the nearest compress; provided, that it shall not be located away from any compress station where it is marketed to a compress at another station for compressing.

In all cases cotton so concentrated at a compress for the purpose of compressing, must pay the local rate from the point of shipment to the compress.

When such cotton is compressed and reshipped, the rate from the point from which it was originally shipped through to the point of destination, shall be paid thereon and the local rate from such original point to the compress refunded to the shipper; provided, that when cotton is concentrated in an opposite direction from its final destination, only so much of the local charge shall be refunded as is necessary to make the rate from the point of concentration apply.

I hereby certify that the above is a true and correct copy of Commodity Tariff No. 2, with the rules governing the same, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this 22nd day of August, 1891.

J. J. ARTHUR, *Secretary.*

(See Tariff 6, and Circular 6, *Post.*)

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
September 1, 1891.

Due and legal notice, as provided by the act of the Twenty-second Legislature of Texas, approved April 3, 1891, establishing a Railroad Commission for the State of Texas, and defining its duties, powers, etc., having been given by the Railroad Commission of Texas to each railroad company in said State, that said Commission would on July 6, 1891, begin the work of classifying and defining rates of transporration on all freight and property of every kind, to be transported over railroads from point to point within said State, and that said work

would be continued from day to day until finished, and the legally authorized agents or representatives of said railroad companies, in pursuance of said notice, having appeared before said Commission at its session and had a full hearing upon said subject, and said Commission having fully considered the subject of establishing rates on the commodities named in the subjoined Commodity Tariff No. 3, do fix and establish a rate therein set forth, which said rate shall go into effect on all railroads in the State of Texas on shipments of lumber, laths and shingles, from and to points within said State, except as hereinafter mentioned, on and after the 23d day of September, 1891, with the regulations in relation thereto, and remain in force and effect until canceled by said Commission.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commission.*

COMMODITY TARIFF NO. 3.

Issued by Railroad Commission of Texas, applying on Lumber, Laths and Shingles, in car loads, straight or mixed, minimum weight 24,000 pounds, between all stations in Texas, except as hereinafter mentioned.
Effective September 23, 1891.

RATES IN CENTS PER ONE HUNDRED POUNDS.

10 miles and under	4	95 miles and over	90.13½
15 miles and over 10	4½	100 miles and over	95.14
20 miles and over 15	5	125 miles and over	100.15
25 miles and over 20	6	150 miles and over	125.16
30 miles and over 25	7	200 miles and over	150.17
35 miles and over 30	7 1-2	250 miles and over	200.18
40 miles and over 35	8	300 miles and over	250.19
45 miles and over 40	8 1-2	350 miles and over	300.20
50 miles and over 45	9	400 miles and over	350.21
55 miles and over 50	9 1-2	450 miles and over	400.22
60 miles and over 55	10	500 miles and over	450.23
65 miles and over 60	10 1-2	550 miles and over	500.24
70 miles and over 65	11	600 miles and over	550.25
75 miles and over 70	11 1-2	650 miles and over	600.26
80 miles and over 75	12	700 miles and over	650.27
85 miles and over 80	12 1-2	Over 700 miles	28
90 miles and over 85	13		

Exception No. 1.—Points on the Galveston, Harrisburg & San Antonio Railroad east of Beaumont, including Rockland and Sabine Pass Branch, to and including Orange, shall take the rate fixed from Beaumont by the mileage rate to all points in the State west of Houston.

Exception No. 2.—Points on the Houston & West Texas Railway north of Valda, to and including Logansport, shall take the rate fixed from Valda by the mileage rate to all points in the State west of Houston.

Exception No. 3.—Points on the Missiouri, Kansas & Texas Railway from Trinity to and including Colmesneil, shall take the rate fixed from Trinity by the mileage rate to all points in the State north and west of Palestine and west of Houston.

Exception No. 4.—The rates now in force from points on the Galveston, Harrisburg & San Antonio Railway east of Houston to Houston, shall remain in force.

Exception No. 5.—The rate now in force from points on the Houston East & West Texas Railroad north of Houston to Houston, shall remain in force.

The rates herein prescribed include the privilege of having lumber stopped at a planing mill for the purpose of planing on payment of an additional charge of $5 per car.

No additional charge allowed where freight described in this tariff passes over more than one road.

At all points where railroads intersect or meet at the same town or city from which freight shall be carried to the same point or destination, the longer line or lines of road may charge rates of freight not lower than that fixed for through freights on the shortest line between such points without affecting the rates to be charged at intermediate points on said longest line or lines of road.

I hereby certify that the above is a true and correct copy of Commodity Tariff No. 3, and the rules governing the same, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas at the city of Austin, this the 1st day of September, 1891.

J. J. ARTHUR, *Secretary.*

(See Circulars 10, 14, 20, 27, 35, 37, 39, 40, 42, 43, *Post.*)

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TAXAS, September 12, 1891.

Due and legal notice as provided by the Act of the Twenty-second Legislature of Texas, approved April 3, 1892, establishing a Railroad Commission for the State of Texas, and defining its duties, powers, etc., having been given by the Railroad Commission of Texas to each railroad company in said State, that the said Commission would on July 6, 1891, begin the work of classifying and fixing rates of transportation on all freight and property of every kind to be transported over railroads from point to point within said State, and that said work would be continued from day to day until finished, and the legally authorized agents and representatives of said railroad companies in pursuance of said notice having appeared before said Railroad Commission at its session and had a full hearing upon said subject, the said Commission having fully considered the subject of establishing rates on the commodities named in the subjoined Commodity Tariff No. 4, do fix and establish the rates therein set forth, which said rates shall go into effect on all railroads in the State of Texas on shipments of the commodities hereinafter named from and to points within said State on and after the 5th day of October, 1891, together with the regulations in relation thereto herein prescribed, and remain in force and effect until canceled by said Commission.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

COMMODITY TARIFF NO. 4.

Issued by Railroad Commission of Texas, and applying on Cotton Seed, Cotton Seed Hulls, Cotton Seed Meal, Ashes, Cake, Cotton Seed Oil, in car loads, between all stations in Texas. Minimum weight 20,000 pounds.

Effective October 5, 1891. Cancels all existing tariffs on above named commodities.

	RATE IN CENTS PER ONE HUNDRED POUNDS			
	Cotton Seed in Car Loads, Straight	Cotton Seed Hull in Car Loads, Straight.	Cotton Seed Meal, Ashes and Cake in Sacks in car loads Straight or Mixed	Cotton Seed Oils in Bbls., Car Loads, Straight
5 miles and under	5	2½	4	4
10 miles and over 5	5	3	5	5
15 miles and over 10	6	3½	5½	5½
20 miles and over 15	7	4	6	6
30 miles and over 20	8	4½	7	7
40 miles and over 30	9	5	7½	8
50 miles and over 40	10	5½	8	9
60 miles and over 50	10½	6	8½	10
80 miles and over 60	11	6½	9	12
100 miles and over 80	11½	7	10	14
120 miles and over 100	12	7½	10½	16
140 miles and over 120	12½	8	11	18
160 miles and over 140	13	8½	11½	19
180 miles and over 160	13½	9	12	20
200 miles and over 180	14	9½	12½	21
220 miles and over 200	14½	10	13	22
240 miles and over 220	15	10½	13½	23
260 miles and over 240	15½	11	14	24
280 miles and over 260	16	11½	14½	25
300 miles and over 280	16½	12	15	26
320 miles and over 300	17	12½	15½	27
340 miles and over 320	17½	13	16	28
360 miles and over 340	18	13½	16½	29
380 miles and over 360	18½	14	17	30
400 miles and over 380	19	14½	17½	31
450 miles and over 400	19½	15	18	32
500 miles and over 450	20	15½	18½	33
Over 500 miles	20	16	19	34

At all points where railroads intersect or meet at the same town or city from which freight shall be carried to the same points of destination, the longer line or lines of road may charge rates of freight not lower than that fixed for through freight on the shortest line between such points without affecting the rates to be charged at intermediate points on said longest line or lines of road.

I hereby certify that the above is a true and correct copy of Commodity Tariff No. 4, with the rules governing the same, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 12th day of September, 1891.

J. J. ARTHUR, *Secretary.*

(See Circulars 12. 16, 20, 35, 41 *Post.*)

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, September 16, 1891.

Due and legal notice, as provided by the act of the Twenty-second Legislature of Texas, approved April 3, 1891, establishing a Railroad Commission for the State of Texas, and defining its duties, powers, etc., having been given by the Railroad Commission of Texas to each railroad in the State, that said Commission would, on July 6, 1891, begin the work of classifying and fixing rules of transportation on all freight and property of every kind to be transported over railroads from point to point within said State, and that said work would be continued from day to day until finished, and the legally authorized agents and representatives of said railroad companies, in pursuance of said notice, having appeared before said Commission at its session and had a full hearing upon said subjects, and said Commission having fully considered the subject of establishing rates on the commodities named in the subjoined Commodity Tariff No. 5, do fix and establish the rates therein set forth, which said rates shall go into effect on all railroads in the State of Texas on shipments of wood, coal and coke, from and to points within said State on and after the 8th day of October, 1891, together with the regulations in relation thereto herein prescribed, and remain in force and effect until canceled by the said Commission.

JOHN H. REAGAN, *Chairman*,
L. L. FOSTER,
W. P. McLEAN, *Commissioners*.

COMMODITY TARIFF NO. 5.

Issued by the Railroad Commission of Texas and applying on wood, coal and coke between all stations in Texas, in car loads, with minimum as follows: Wood, 8 cords per car; coal and coke, 20,000 pounds per car.

Effective October 18, 1891.

RATES IN CENTS PER TON ON COAL AND COKE.

5 miles and under	$0 45		190 miles and over 180	$1 80	
10 miles and over 5	50		200 miles and over 190	1 90	
15 miles and over 10	55		210 miles and over 200	2 00	
20 miles and over 15	60		220 miles and over 210	2 10	
25 miles and over 20	65		230 miles and over 220	2 20	
30 miles and over 25	70		240 miles and over 230	2 30	
35 miles and over 30	75		250 miles and over 240	2 40	
40 miles and over 35	80		260 miles and over 250	2 50	
45 miles and over 40	85		270 miles and over 260	2 60	
50 miles and over 45	90		280 miles and over 270	2 70	
60 miles and over 50	95		290 miles and over 280	2 80	
70 miles and over 60	1 00		300 miles and over 290	2 90	
80 miles and over 70	1 05		310 miles and over 300	3 00	
90 miles and over 80	1 10		320 miles and over 310	3 10	
100 miles and over 90	1 15		330 miles and over 320	3 20	
110 miles and over 100	1 20		340 miles and over 330	3 30	
120 miles and over 110	1 25		350 miles and over 340	3 40	
130 miles and over 120	1 30		360 miles and over 350	3 50	
140 miles and over 130	1 35		370 miles and over 360	3 60	
150 miles and over 140	1 40		380 miles and over 370	3 70	
160 miles and over 150	1 45		390 miles and over 380	3 80	
170 miles and over 160	1 60		400 miles and over 390	3 90	
180 miles and over 170	1 70		All over 400 miles....	4 00	

RATES IN CENTS PER CORD ON WOOD.

10 miles and under	$0 80		125 miles and over 100	$1 50	
20 miles and over 10	85		150 miles and over 125	1 70	
30 miles and over 20	90		175 miles and over 150	1 85	
40 miles and over 30	95		200 miles and over 175	2 00	
50 miles and over 40	1 00		225 miles and over 200	2 25	
60 miles and over 50	1 05		250 miles and over 225	2 50	
70 miles and over 60	1 10		300 miles and over 250	2 75	
80 miles and over 70	1 15		350 miles and over 300	3 00	
90 miles and over 80	1 20		400 miles and over 350	3 50	
100 miles and over 90	1 25		Over 400 miles.....	4 00	

At all points where railways intersect or meet at the same town or city from which freight shall be carried to the same points of destination, the longer line or lines of road may charge rates of freight no lower than that fixed for through freight on the shortest line between such points.

without affecting the rates to be charged at intermediate points on said longest line or lines of road.

I hereby certify that the above is a true and correct copy of the Commodity Tariff No. 5, with the rules governing the same, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 16th day of September, 1891.

J. J. ARTHUR, *Secretary.*

(See Tariff 9, and Circular 18 *Post.*)

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, September 21, 1891.

Due and legal notice, as provided by the act of the Twenty-second Legislature of Texas, approved April 3, 1891, establishing a Railroad Commission for the State of Texas, and defining its duties, powers, etc., having been given by the Railroad Commission of Texas to each railroad company in said State, that said Commission would, on July 6, 1891, begin the work of classifying and fixing rates of transportation on all freight and property of every kind to be transported over railroads from point to point within said State, and that said work would be continued from day to day until finished, and the legally authorized agents and representatives of said railroad companies, in pursuance of said notice, having appeared before said Commission at its sessions, and had a full hearing upon said subjects, and said Commission having fully considered the subject of establishing rates on the commodity named in the subjoined Commodity Tariff No. 6, hereby cancel and abolish all existing rates on cotton, and do fix and establish the rates therein set forth, which said rates shall go into effect on all railroads in the State of Texas, on shipments of cotton from and to points within said State, on and after the 12th day of October, 1891, together with the regulations thereto herein prescribed, and remain in force and effect until canceled by the Commission.

JOHN H. REAGAN, *Chairman.*
L. L. FOSTER,
W. P. McLEAN, *Commissioners.*

COMMODITY TARIFF NO. 6.

Issued by the Railroad Commission of Texas, and applying on cotton in bales, compressed and uncompressed, actual weght, in any quantity, between all stations in Texas, and cancelling all existing rates on cotton.
Effective October 12, 1891.

RATES IN CENTS PER ONE HUNDRED POUNDS.

Distances.	Cotton in Bales Compressed.
10 miles and under	10
15 miles and over 10	10¼
20 miles and over 15	10½
25 miles and over 20	10¾
30 miles and over 25	11
35 miles and over 30	11½
40 miles and over 35	12
45 miles and over 40	14
50 miles and over 45	16
55 miles and over 50	18
60 miles and over 55	20
65 miles and over 60	21
70 miles and over 65	22
75 miles and over 70	23
80 miles and over 75	24
85 miles and over 80	25
90 miles and over 85	26
95 miles and over 90	27
100 miles and over 95	28
105 miles and over 100	29
110 miles and over 105	30
115 miles and over 110	31
120 miles and over 115	32
125 miles and over 120	33
130 miles and over 125	34
135 miles and over 130	35
140 miles and over 135	36
145 miles and over 140	37
150 miles and over 145	38
155 miles and over 150	39
160 miles and over 155	40
165 miles and over 160	41
170 miles and over 165	42
175 miles and over 170	43
180 miles and over 175	44
185 miles and over 180	45
190 miles and over 185	46
195 miles and over 190	47
200 miles and over 195	48
225 miles and over 200	49
250 miles and over 225	50
300 miles and over 250	51
360 miles and over 300	52
400 miles and over 350	53
450 miles and over 400	54
500 miles and over 450	55
Over 500 miles	55

1. Fractions of less than 100 pounds must be charged at the rate per pound fixed for 100 pounds.

2. No additional charge allowed where cotton passes over more than one road.

3. When, by agreement between a railroad company and a shipper, uncompressed cotton shall be stopped in transit and compressed 10 cents per 100 shall be added to the rate herein prescribed for compressed cotton to pay compress and all other charges incident thereto, and cotton so stopped and compressed shall take the rate prescribed for compressed cotton from original point of shipment to point of destination.

4. When shippers tender uncompressed cotton for shipment in that condition to its final destination, 10 cents per 100 pounds shall be added to the rate herein prescribed on compressed cotton for carrying such cotton all distances over thirty miles.

5. For transporting cotton all distances under thirty miles the rate on uncompressed cotton shall be the same as herein prescribed for compressed cotton.

6. The rate on cotton from all stations in Texas to Houston shall be the rate from said stations to Galveston, less 7 cents per 100 pounds.

7. The local rate on cotton from Houston to Galveston shall be 7 cents per 100 pounds.

8. At all points where railroads imtersect or meet at the same town or city from which freight shall be carried to the same point of destination, the longer line or lines of road may charge rates of freight not lower than that fixed for through freight on the shortest line between such points without affecting the rates to be charged at intermediate points on said longer line or lines of road.

9. For the purpose of compressing, cotton may be concentrated at any compress in the direction in which it is to be shipped; but where it is shipped back out of the direction of its destination for the purpose of being compressed, it must be compressed at the nearest compress; provided, that it shall not be located away from any compress station where it is marketed to a compress at another station for compressing. In all cases cotton so concentrated at a compress for the purpose of compressing must pay the local rate from the point of shipment to the compress. When such cotton is compressed and reshipped, the rate from the point from which it was originally shipped through to the point of destination shall be paid thereon, and the local rate from such original point to the compress refunded to the shipper; provided, that when cotton is concentrated in an opposite direction from its final destination only so much of the local charge shall be refunded as is necessary to make the rate from the point of concentration apply.

I hereby certify that the above is a true and correct copy of Commodity Tariff No. 6, with the rules governing the same, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 21st day of September, 1891.

J. J. ARTHUR, *Secretary.*

(See Circulars 19. 20, 23, 25, 31 and 35 *Post.*)

OFFICE OF THE
RAILROAD COMMISSION OF TEXAS.
Austin, Texas, September 29, 1891.

Due and legal notice, as provided by the act of the Twenty-second Legislature of Texas, approved April 3, 1891, establishing a Railroad Commission for the State of Texas, and defining its duties, powers, etc., having been given by the Railroad Commission of Texas to each railroad company in said State, that said Commission would on July 6, 1891, begin the work of classifying and fixing the rates of transportation on all freight and property of every kind to be transported over railroads from point to point within said State and that said work would be continued from day to day until finished, and the legally authorized agents and representatives of said railroad companies in pursuance of said notice having appeared before said Commission at its sessions and had a full hearing upon said subjects, and said Commission having fully considered the subject of establishing rates on the commodities named in the subjoined Commodity Tariff No. 7, do fix and establish the rates therein set forth and the regulation in relation thereto, which said rates and regulations shall go into effect on all railroads in the State of Texas on shipments of freight therein named from and to points within said State on and after the 21st day of October, 1891, with the exceptions herein specified, and remain in force and effect until canceled by the said Commission.

JOHN H. REAGAN, *Chairman.*
W. P. MCLEAN,
L. L. FOSTER, *Commissioners.*

COMMODITY TARIFF NO. 7.

Issued by the Railroad Commission of Texas.

To apply on the commodities named below when shipped in quantities *less than car loads*, as follows:

Grain Rates on Wheat, Corn, Rye, Barley, Oats, Bran, Malt, Millfeed and Millstuff in barrels, boxes or sacks, and on Hay in bales.

Flour Rates on Flour, Corn Meal, Oat Meal, Hominy and Grits in barrels, boxes and sacks.

Salt Rates on Salt packed in barrels or sacks.

Effective October 21, 1891.

All conflicting rates will be hereby canceled.

RATES IN CENTS PER HUNDRED POUNDS.

DISTANCE.	Grain.	Flour.	Salt.
5 miles and under	15	14	12
10 miles and over 5 miles	15	15	12 1-2
15 miles and over 10 miles	15 1-2	15 1-2	13
20 miles and over 15 miles	16	17	14
25 miles and over 20 miles	16	17	15
30 miles and over 25 miles	16 1-2	17 1-2	16
35 miles and over 30 miles	16 1-2	17 1-2	17
40 miles and over 35 miles	17	18	17 1-2
45 miles and over 40 miles	17 1-2	18 1-2	18
50 miles and over 45 miles	18	19	18 1-2
55 miles and over 50 miles	18	19	19
60 miles and over 55 miles	18 1-2	19 1-2	19 1-2
65 miles and over 60 miles	18 1-2	19 1-2	20
70 miles and over 65 miles	19	20	20 1-2
75 miles and over 70 miles	19	20	21
80 miles and over 75 miles	19 1-2	20 1-2	21 1-2
85 miles and over 80 miles	19 1-2	20 1-2	22
90 miles and over 85 miles	20	21	22 1-2
95 miles and over 90 miles	20	21	23
100 miles and over 95 miles	20 1-2	21 1-2	23 1-2
105 miles and over 100 miles	20 1-2	22	24
110 miles and over 105 miles	21	22 1-2	24 1-2
115 miles and over 110 miles	21	22 1-2	25
120 miles and over 115 miles	21 1-2	23	25 1-2
125 miles and over 120 miles	21 1-2	23	26
130 miles and over 125 miles	22	23 1-2	26 1-2
135 miles and over 130 miles	22 1-2	24	27
140 miles and over 135 miles	22 1-2	24	27 1-2
145 miles and over 140 miles	23	24 1-2	28
150 miles and over 145 miles	23	24 1-2	28 1-2
155 miles and over 150 miles	23 1-2	25	29
160 miles and over 155 miles	24	25 1-2	29 1-2
165 miles and over 160 miles	24 1-2	25 1-2	30
170 miles and over 165 miles	24	26	30 1-2
175 miles and over 170 miles	24 1-2	26	31
180 miles and over 175 miles	25 1-2	26 1-2	31 1-2
185 miles and over 180 miles	25	26 1-2	32
190 miles and over 185 miles	25	26 1-2	32 1-2
195 miles and over 190 miles	25 1-2	27	33
200 miles and over 195 miles	25 1-2	27	33 1-2

DISTANCE.	Grain.	Flour.	Salt.
210 miles and over 200 miles....	26	27 1-2	34
220 miles and over 210 miles....	26	27 1-2	35
230 miles and over 220 miles....	26	27 1-2	36
240 miles and over 230 miles....	26 1-2	28 1-2	37
250 miles and over 240 miles....	26 1-2	28 1-2	38
260 miles and over 250 miles....	26 1-2	28 1-2	39
270 miles and over 260 miles....	26 1-2	28	40
280 miles and over 270 miles ...	27	29	41
290 miles and over 280 miles....	27	29	42
300 miles and ever 290 miles ...	27	29	43
310 miles and over 300 miles....	27	29	44
320 miles and over 310 miles ...	27 1-2	29 1-2	45
330 miles and over 320 miles....	27 1-2	29 1-2	46
340 miles and over 330 miles....	27 1-2	29 1-2	47
350 miles and over 340 miles....	27 1-2	29 1-2	48
360 miles and over 350 miles....	28	30	49
370 miles and over 360 miles....	28	30	50
380 miles and over 370 miles....	28	30	51
390 miles and over 380 miles....	28	30	52
400 miles and over 390 miles....	28 1-2	30	53
420 miles and over 400 miles....	29	31	55
440 miles and over 420 miles....	30	32	57
460 miles and over 440 miles....	31	33	58
480 miles and over 460 miles....	32 1-2	35	59
Over 480 miles.....	35	37	60

CONDITIONS.

1. The foregoing notes shall apply between railroad stations in the State of Texas by the actual mileage of the railroad tracks over which the freight may pass.

2. When two or more routes of railroad extended from point of origin to destination, the lowest rates applicable under the specifications of this tariff, by any one of such routes may be adopted by the other routes interested without affecting rates at intermediate points on such routes.

3. The minimum charge on any single shipment of the commodities subject to this tariff shall be twenty-five (25) cents.

EXCEPTIONS.

1. The following named lines or railroad will be exempt from the operation of this tariff:

Brownsville & Gulf Railroad, Galveston & Western Railroad, Lake Creek Railroad, Paris & Great Northern Railway, Paris, Marshall & Sabine Valley Railway, Rio Grande Railroad, Rio Grande & ElPaso Railroad, Texar-

kana & Fort Smith Railway, Texas Trunk Railway, Pecos Valley Railway, Kildare & Linden Railroad, Weatherford Mineral Well & Northwestern Railway.

2. Existing rates on Flour, Meal, Hominy, Grits and Bran in lots of ten barrels or more, on all shipments between Galveston and Houston, shall remain in force, provided that the charge for less than ten barrels shall in no case exceed the charge for ten barrels.

I hereby certify that the above is a true and correct copy of Commodity Tariff No. 7, with the exceptions thereto and the rules governing the same, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas at the City of Austin, this 29th day of September, 1891.

J. J. ARTHUR, *Secretary,*

(See Tariff 8 *Post.*)

OFFICE OF
RAILROAD COMMISSION OF TEXAS.
AUSTIN TEXAS, October, 10, 1891.

Due and legal notice as provided by the Act of the Twenty-second Legislature of Texas, approved April 3, 1891, establishing a Railroad Commission for the State of Texas and defining its duties, powers, etc., having been given by the Railroad Commission of Texas to each railroad company in said State, that said Commission would on July 6, 1891, begin the work of classifying and fixing the rates of transportation on all freight and property of every kind to be transported over railroads from point to point in said State, and that said work would be continued from day to day until finished, and the legally authorized agents and representatives of said railroad companies, in pursuance of said notice, having appeared before said Commission at its session and had a full hearing upon said subjects, and the said Commission having fully considered the subject of establishing rates on the commodities named in the subjoined Commodity Tariff No. 8, do fix and establish the rates herein set forth and the regulations in relation thereto, which said rates and regulations shall go into effect on all railroads in the State of Texas on shipments of freight therein named from and to points within said State on and after the 30th day of October, 1891, with the exceptions herein specified, and

remain in force and effect until canceled by said commission.

JOHN H. REAGAN, *Chairman,*
W. P. MCLEAN,
L. L. FOSTER, *Commissioners.*

COMMODITY TARIFF NO. 8.

Issued by the Railroad Commission of Texas, to apply on the commodities named below when shipped in quantities less than car loads, as follows:

Grain Rates on Wheat, Corn, Rye, Barley, Oats, Bran, Malt, Millfeed and Millstuff, in barrels, boxes or sacks, and on Hay in bales.

Flour Rates on Flour, Corn Meal, Oat Meal, Hominy and Grits, in barrels boxes or sacks.

Salt Rates on Salt packed in barrels or sacks.

Effective October 30, 1891.

Commodity Tariff No. 7, adopted September 29, 1891, by the Railroad Commission of Texas and effective October 21. 1891, will be hereby canceled.

RATE IN CENTS PER ONE HUNDRED POUNDS.

DISTANCE.	Grain Salt.	Flour.
5 miles and under	10	10
10 miles and over 5 miles	11	11
15 miles and over 10 miles	12	12
20 miles and over 15 miles	12	13
25 miles and over 20 miles	13 1-2	14
30 miles and over 25 miles	13 1-2	14-1-2
35 miles and over 30 miles	14	15
40 miles and over 35 miles	14 1-2	15 1-2
45 miles and over 40 miles	15	16
50 miles and over 45 miles	15 1-2	16 1-2
55 miles and over 50 miles	16	17
60 miles and over 55 miles	16 1-2	17 1-2
65 miles and over 60 miles	17	18
70 miles and over 65 miles	17 1-2	18 1-2
75 miles and over 70 miles	18	19
80 miles and over 75 miles	18 1-2	19 1-2
85 miles and over 80 miles	19	20
90 miles and over 85 miles	19 1-2	20 1-2
95 miles and over 90 miles	20	21
100 miles and over 95 miles	20 1-2	21 1-2
105 miles and over 100 miles	20 1-2	22
110 miles and over 105 miles	21	22 1-2

DISTANCE.	Grain, Salt.	Flour.
115 miles and over 110 miles	21	22 1-2
120 miles and over 115 miles	21 1-2	23
125 miles and over 120 miles	21 1-2	23
130 miles and over 125 miles	22	23 1-2
135 miles and over 130 miles	22 1-2	24
140 miles and over 135 miles	22 1-2	24
145 miles and over 140 miles	23	24 1-2
150 miles and over 145 miles	23	24 1-2
155 miles and over 150 miles	23 1-2	25
160 miles and over 155 miles	24	25 1-2
165 miles and over 160 miles	24	25 1-2
170 miles and over 165 miles	24 1-2	26
175 miles and over 170 miles	24 1-2	26
180 miles and over 175 miles	25	26 1-2
185 miles and over 180 miles	25	26 1-2
190 miles and over 185 miles	25	26 1-2
195 miles and over 190 miles	25 1-2	27
200 miles and over 195 miles	25 1-2	27
210 miles and over 200 miles	26	27 1-2
220 miles and over 210 miles	26	27 1-2
230 miles and over 220 miles	26	27 1-2
240 miles and over 330 miles	26 1-2	28 1-2
250 miles and over 240 miles	26 1-2	28 1-2
260 miles and over 250 miles	26 1-2	28 1-2
270 miles and over 260 miles	26 1-2	28 1-2
280 miles and over 270 miles	27	29
290 miles and over 280 miles	27	29
300 miles and over 290 miles	27	29
310 miles and over 300 miles	27	29
320 miles and over 310 miles	27 1-2	29 1-2
330 miles and over 320 miles	27 1-2	29 1-2
340 miles and over 330 miles	27 1-2	29 1-2
350 miles and over 340 miles	27 1-2	29 1-2
360 miles and over 350 miles	28	30
370 miles and over 360 miles	28	30
380 miles and over 370 miles	28	30
390 miles and over 380 miles	28	30
400 miles and over 390 miles	28 1-2	30 1-2
420 miles and over 400 miles	29	31
440 miles and over 420 miles	30	32
460 miles and over 440 miles	31	33
480 miles and over 460 miles	32 1-2	35
Over 480 miles	35	37

CONDITIONS.

First—When any freight included in this tariff shall be carried over two or more railroads, or parts of railroads, not under the same control, the rate shall be determined by adding together the charges on the several railroads

or parts of railroads as prescribed in the tariff for the respective distances such freight is carried over each and deducting from the sum 20 per cent. The joint rate thus ascertained may be divided between roads over which the freight is transported in such proportion as may be agreed upon between such roads.

Second—All connecting roads which are under the management, and controlled by lease, ownership or otherwise of one and the same company, shall, for the purpose of transportation in applying this tariff, be considered as constituting but one and the same road, and the rate shall be computed as upon parts of one and the same road.

Third—When two or more routes of railroad extend from points of origin to destination, the lowest rate applicable under the specifications of this tariff by any one of such routes may be adopted by the other routes interested without affecting rates at intermediate points on such routes.

Fourth—The minimum charge on any single shipment of the commodities subject to this tariff shall be 25 cents.

EXCEPTIONS.

First—The following named lines of railroad will be excepted from the operations of this tariff: Brownsville & Gulf Railroad; Galveston & Western Railroad; Lake Creek Railroad; Rio Grande Railroad; Rio Grande & Eagle Pass Railroad; Rio Grande & El Paso Railroad.

Second—The existing rate of seven and a half cents per hundred pounds on flour, meal, hominy, grits and bran in lots of ten barrels or more, on all shipments between Galveston and Houston, shall remain in force, provided that the charge for less than ten barrels shall in no case exceed the charge for ten barrels.

I hereby certify that the above is a true and correct copy of Commodity Tariff No. 8, with the exceptions thereto and the rules governing the same, adopted by the Railroad Commission.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 10th day of October, 1891.

J. J. ARTHUR, *Secretary.*

(See Circulars 20 and 35 *Post.*)

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TAXAS, October 16, 1891.

Due and legal notice as provided by the Act of the Twenty-second Legislature of Texas, approved April 3, 1891, establishing a Railroad Commission for the State of Texas, and defining its duties, powers, etc., having been given to each railroad company in said State, that said Commission would on July 6, 1891, begin the work of classifying and fixing rates of transportation on all freight and property of every kind to be transported over railroads from point to point within said State, and that said work would be continued from day to day until finished, and the legally authorized agents and representatives of said railroad companies in pursuance of said notice having appeared before said Commission at its sessions and had a full hearing upon said subjects, and said Commission having fully considered the subject of establishing rates on the commodities named in the subjoined Commodity Tariff No. 9, do fix and establish the rates therein set forth, which said rates go into effect on all railroads in the State of Texas on shipments of *Wood, Coal and Coke* from and to points within said State on and after the 5th day of November, 1891, together with the regulations in relation thereto therein prescribed, and remain in force and effect until canceled by the said Commission.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

COMMODITY TARIFF NO. 9.

Issued by Railroad Commission of Texas. To apply by continuous mileage between points in Texas, subject to conditions contained in Circular No. 20, adopted by the Railroad Commission of Texas October 7, 1891, on shipments of *Wood, Coal* and *Coke, in car loads.*

Effective November 5, 1891.

Rates on Wood in Dollars and Cents per Cord. Minimum, Eight (8) Cords pr Car

DISTACE.	RATE.	DISTANCE.	RATE.
10 miles and under	$0 80	125 miles and over 100	$1 50
20 miles and over 10	85	150 miles and over 125	1 70
30 miles and over 20	90	175 miles and over 150	1 85
40 miles and over 30	95	200 miles and over 175	2 00
50 miles and over 40	1 00	225 miles and over 200	2 25
60 miles and over 50	1 05	250 miles and over 225	2 50
70 miles and over 60	1 10	300 miles and over 250	2 75
80 miles and over 70	1 15	350 miles and over 300	3 00
90 miles and over 80	1 20	400 miles and over 350	3 50
100 miles and over 90	1 25	Over 400 miles	4 00

Rates on *Hard Coal*, applying on *Hard Coal* and *Blacksmiths' Coal.*

Rates on *Soft Coal*, applying on *Soft Coal* and *Coke.*

In Dollars and Cents per ton of 2000 pounds. Minimum, 20,000 lbs per car.

DISTANCE.	RATE. Hard Coal.	Soft Coal.
5 miles and under	$0 60	$0 45
10 miles and over 5	60	50
15 miles and over 10	70	55
20 miles and over 15	70	60
25 miles and over 20	80	65
30 miles and over 25	80	70
35 miles and over 30	90	75
40 miles and over 35	90	80
45 miles and over 40	1 00	85
50 miles and over 45	1 00	90
60 miles and over 50	1 10	95
70 miles and over 60	1 20	1 00
80 miles and over 70	1 30	1 05
90 miles and over 80	1 40	1 10
100 miles and over 90	1 50	1 15
110 miles and over 100	1 60	1 20
120 miles and over 110	1 70	1 25
130 miles and over 120	1 80	1 30
140 miles and over 130	1 90	1 35
150 miles and over 140	1 95	1 40
160 miles and over 150	2 00	1 45
170 miles and over 160	2 05	1 60
180 miles and over 170	2 10	1 70
190 miles and over 180	2 15	1 80
200 miles and over 190	2 20	1 90

DISTANCE.	RATE. Hard Coal.	Soft Coal.
210 miles and over 200	2 25	2 00
220 miles and over 210	2 30	2 10
230 miles aud over 220	2 35	2 20
240 miles and over 230	2 40	2 30
250 miles and over 240	2 45	2 40
260 miles and over 250	2 50	2 50
270 miles and over 260	2 55	2 55
280 miles and over 270	2 60	2 60
290 miles and over 280	2 65	2 65
300 miles and over 290	2 70	2 70
320 miles and over 300	2 75	2 75
340 miles and over 320	2 80	2 80
360 miles and over 340	2 85	2 85
380 miles and over 360	2 90	2 90
400 miles and over 380	2 95	2 95
450 miles and over 400	3 00	3 00
500 miles and over 450	3 00	3 00
550 miles and over 500	3 25	3 25
600 miles and over 550	3 50	3 50
650 miles and over 600	3 75	3 75
Over 650 miles	4 00	4 00

When two or more routes of railroad extend from point of origin to destination, the lowest rates applicable, under the specifications of this tariff, by any one of such routes, may be adopted by the other routes interested without affecting rates at intermediate points on such routes.

EXCEPTIONS.

First—The existing rate of $1 per ton of 2240 pounds on coal and coke between Galveston and Houston shall remain in force.

Second—The rates on coal, authorized for application between points on the Rio Grande & Eagle Pass Railway by Circular No. 18, issued by the Railroad Commissions of Texas October 6, 1891, and effective October 15, 1891, shall remain in force.

Commodity Tariff No. 5, adopted by the Railroad Commission of Texas September 16, 1891, and effective October, 8, 1891, will be hereby *canceled*.

I hereby certify that the above is a true and correct

copy of Commodity Tariff No. 9, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, the 16th day of October, 1891.

J. J. ARTHUR, *Secretary.*

(See Circulars 20, 24, 26 and 35 *Post.*)

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, October 25, 1891.

Due and legal notice, as provided by the act of the Twenty-second Legislature of Texas, approved April 3, 1891, establishing a Railroad Commission for the State of Texas and defining its duties, powers, etc., having been given by the Railroad Commission of Texas to each railroad company in said State, that said Commission would on July 6, 1892, begin the work of classifying and fixing rates of transportation on all freight and property of every kind, to be transported over railroads from point to point within said State, and that said work would be continued from day to day until finished, and the legally authorized agents or representatives of said railroad companies, in pursuance of said notice, having appeared before said Commission at its session and had a full hearing upon said subject, and said Commission having fully considered the subject of establishing rates on the commodities named in the subjoined Commodity Tariff No. 10, do fix and establish the rates therein set forth, which said rates shall go into effect on all railroads in the State of Texas on shipments of common brick, fire brick, stone and sand from and to points within said State, on and after the 10th day of November 1891, together with the regulations in relation thereto therein prescribed, and remain in force and effect until canceled by the said Commission.

JOHN H. REAGAN, *Chairman.*
L. L. FOSTER,
W. P. McLEAN, *Commissioners.*

COMMODITY TARIFF NO. 10.

Issued by Railroad Commissioners of Texas.

Applying by continuous mileage between all stations in Texas, as follows:

On common brick in car loads—Minimum 8000 brick per car.

On fire brick in car loads—Minimum 8000 brick per car.

On sand and stone in car loads—Minimum 25,000 pounds per car.

Effective November 15, 1891.

Rates on *Common Brick*, car loads, in dollars and cents, per 1000 brick

5 miles and under	62½	150 miles and over 125	2 50
10 miles and over 5	80	175 miles and over 150	2 75
20 miles and over 10	1 00	200 miles and over 175	3 00
30 miles and over 20	1 25	250 miles and over 200	3 50
40 miles and over 30	1 40	300 miles and over 250	4 00
50 miles and over 40	1 50	350 miles and over 300	4 50
60 miles and over 50	1 60	400 miles and over 350	5 00
70 miles and over 60	1 70	450 miles and over 400	5 50
80 miles and over 70	1 80	500 miles and over 450	6 00
90 miles and over 80	1 90	550 miles and over 500	6 50
100 miles and over 90	2 00	Over 550 miles	7 00
125 miles and over 100	2 25		

Rates on *Fire Brick*, car loads, in dollars and cents, per 1000 brick.

5 miles and under	70	150 miles and over 125	2 75
10 miles and over 5	90	175 miles and over 150	3 02
20 miles and over 10	1 10	200 miles and over 175	3 30
30 miles and over 20	1 37	250 miles and over 200	3 50
40 miles and over 30	1 54	300 miles and over 250	4 00
50 miles and over 40	1 65	350 miles and over 300	4 50
60 miles and over 50	1 76	400 miles and over 350	5 00
70 miles and over 60	1 87	450 miles and over 400	5 50
80 miles and over 70	1 98	500 miles and over 450	6 00
90 miles and over 80	2 09	550 miles and over 500	6 50
100 miles and over 90	2 20	Over 550 miles	7 00
125 miles and over 100	2 47		

Rates on *Stone* and *Sand*, car loads, per 100 pounds.

5 miles and under	3½	150 miles and over 125	8
10 miles and over 5	3½	175 miles and over 150	9
20 miles and over 10	4	200 miles and over 175	10
30 miles and over 20	4½	250 miles and over 200	11
40 miles and over 30	5½	300 miles and over 250	12
50 miles and over 40	5½	350 miles and over 300	13
60 miles and over 50	5½	400 miles and over 350	14
70 miles and over 60	6	450 miles and over 400	15
80 miles and over 70	6	500 miles and over 450	16
90 miles and over 80	6½	550 miles and over 500	17
100 miles and over 90	7	Over 550 miles	18
125 miles and over 100	7½		

EXCEPTIONS.

1. When Common Brick, Stone and Sand are shipped over two or more roads, 10 per cent. shall be added to the rate thereon for 200 miles and under.

2. Rates herein prescribed are not subject to the conditions prescribed in *Circular No. 20.*

3. Existing rates on brick, from Laredo to San Antonio, New Braunfels and San Marcos, and on Sand from Devine to San Antonio, shall remain in force.

4. Existing rates from Harrisburg to Galveston shall remain in force.

5. Rates on Stone for jetty work at any point where work is being done under contract with the United States Government or private persons, for the improvement of the rivers, bayous and harbors of Texas, shall be as follows: Except where a lower rate shall have been contracted for, in which case the contract rate shall obtain; 160 miles and less six and one quarter (6¼) cents per 100 pounds, except where the mileage carries a less rate under this tariff.

6. When two or more routes of railroad extend from point of origin to destination, the lowest rate applicable by any one of such routes may be adopted by the other routes interested without affecting rates at intermediate points on said routes.

I hereby certify that the above is a true and correct copy of Commodity Tariff No. 10, with the rules governing the same, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas at the city of Austin, this the 26th day of October, 1891.

J. J. ARTHUR, *Secretary.*

(See Circulars 20, 29, 32, 33, 35, 36 and 38 *Post.*)

CIRCULAR No. 1.

Rulings of the Commission.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, July 13, 1891.

Under the latter clause of section 8 of the act creating the commission all tariffs in existence at the date of the

organization thereof, June 10, remain in force until changed by or with the consent of the commission.

Applications for a change in rates must be signed by the general or assistant general freight agent of the road desiring the change. Applications for joint rates must be signed by the general or assistant general freight agent of each road interested.

Changes in rates approved by the commission take effect on the date specified in the order of approval not less than ten days from the date of filing the application in this office, and must be posted as effective on that date unless before revoked by order of the commission.

By order of the commission.

JNO. H. REAGAN, *Chairman.*

Atterst:

J. J. ARTHUR, *Secretary.*

NOTE.—Hereafter all rulings of the commission of general importance will be published in circular form and sent to each railroad company in the State.

CIRCULAR No. 2.

Rulings of the Commission.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, July 14, 1891.

Under section 15, paragraph h, freight may be carried free, or at reduced rates, for "the State, or for any city, county or town government, or for charitable purposes, or to and from fairs and exhibitions for exhibition thereof."

The transportation of freight free, or at reduced rates, for any person, firm or corporation not included in the exceptions above specified, constitutes a discrimination, and subjects the offender to the penalties prvided in section 14.

The commission has decided: 1. That a church is not an object of charity, and therefore not entitled to the benefit of the exception applicable to charitable institutions. 2. That Buckner's Orphans' Home, located in Dallas county, being a charitable institution, is entitled to the benefit of the exception. 3. That household goods,

section house supplies, or other property belonging to railroad employes, can not be transported free, or at rates other than those prescribed in the regular tariff applicable to such goods or property.

Done by order of the commission.

JOHN H. REAGAN, *Chairman.*

Attest:

J. J. ARTHUR, *Secretary.*

(See Circular 9 *Post.*)

CIRCULAR No. 3.

OFFICE OF
RAILROAD COMMISSION OF TEXAS.
AUSTIN, TEXAS, July 25, 1891.

Roads desiring to establish a tariff covering reshipments of freight refused by consignees to the consignor or other person may fix a lower rate for such shipments than that prescribed in the regular tariff. The commission can not approve a rate intended to cover a special case, besides goods of a perishable nature should become worthless by the times rates approved by the commission take effect, if application for rates to cover reshipments is not made until the occasion arises for reshipment; hence the necessity for a regular tariff covering all cases of reshipment likely to arise.

Rates on stock cattle moved from one point to another on account of the scarcity of water or feed, or for breeding purposes, or for the purpose of concentration at a given point to be fed for market, may be less than the regular tariff applicable to cattle intended for slaughtering purposes. Roads desiring to put on a tariff to cover such cases may do so under such regulations as may be necessary to protect the tariff on stock destined for slaughter.

The frequency of requests for special rates in such cases suggests the necessity for some such general tariffs as are above indicated.

By order of the commission.

JOHN H. REAGAN, *Chairman.*

Attest:

J. J. ARTHUR, *Secretary.*

CIRCULAR No. 4.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, August 19, 1891.

The 10 per cent. allowed on Commodity Tariff No 1 by the Commission, to certain roads and parts of roads, is intended to apply on all freight passing over such roads for the distance it may be carried over the road, or part of road, entitled to add 10 per cent to the Commission tariff.

When shipments originate on a road or part of a road entitled to add 10 per cent to Commodity Tariff No. 1, and terminate on a connecting road, or part of a road, entitled to a like privilege, each road, or part of road, is entitled to add 10 per cent. for the distance freight may be carried over such road, or part of road.

When a combination of local rates under the rule laid down in Commodity Tariff No. 1, for ascertaining a joint rate over two or more roads, results in a higher rate over the shortest route than the rate over the longest route between given points, roads constituting the shortest route between the point of shipment and the point of destination, may charge a rate not less than that fixed by the combination of local rates, making the lowest joint rate between such point, without affecting rates at intermediate points.

JOHN H. REAGAN, *Chairman.*

Attest:

J. J. ARTHUR, *Secretary.*

(See Circular 5 *Post.*)

CIRCULAR No. 5.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, August 27, 1891.

The following amendments to Commodity Tariff No. 1, and changes in the rule governing the same, have been adopted by the Railroad Commission of Texas, and must be incorporated in said tariff when published:

Under the head of "hay," lines 12 and 13, amend so as to read as follows:

Hay in car loads, minimum weight, as follows:
On narrow guage roads, 10,000 pounds.
On standard guage roads:
Cars 30 feet and under, 17,000 pounds.
Cars 34 feet long and over 30 feet long, 19,000 pounds.
Cars over 34 feet long, 2000 pounds.

In line 9, page 1, add the word Bran after the word Flour.

In line 6, page 1, after the word Oats add the word Malt.

To the list of roads exempted from the operation of this tariff add the Weatherford, Mineral Wells & Northwestern Railroad.

In the place of paragraph 1, Circular No. 4, substitute the following: "The 10 per cent. permitted to be added to the rate on certain roads and parts of roads shall be added to the through rate on all freight originating or terminating on roads or parts of roads entitled to this privilege. On shipments under this tariff originating and terminating on the narrow guage part of the East Line & Red River Railroad the minimum weight per car load, except hay, may be 16,000 pounds.

JOHN H. REAGAN, *Chairman.*

Attest:

J. J. ARTHUR, *Secretary.*

(See Circular 44 *Post.*)

CIRCULAR No. 6.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, August 29, 1891.

Please furnish the Commission with a list of the stations, if any, on your road, other than junction points, competitive with stations on other roads, and which will thereby be affected by the Commission tariff on cotton. State the name of the station on your road and the name of the station on other roads with which it is competitive, the distance between such stations, the distance from each to Galveston and the rate applying on each under the Commission tariff.

In estimating distances for the purpose of ascertaining the amount of freight charge, all fractions of a mile less

than one-half shall be disregarded, and all fractions of a mile of one-half and over shall be considered as one mile.

JOHN H. REAGAN, *Chairman.*

Attest:

J. J. ARTHUR, *Secretary.*

CIRCULAR No. 7.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, September 12, 1891.

It is hereby ordered by the Railroad Commission of Texas, that the Commodity Tariff No. 2, adopted August 22, 1891, and effective September 14, 1891, be modified and amended (as provided in Sec. 8 of the Commission law) as follows:

1. The rate on cotton from all points in Texas to Houston shall be the rate from said points to Galveston less 7 cents per 100 pounds.

2. The local rate on cotton from Houston to Galveston shall be 7 cents per 100 pounds.

The above modifications and amendments shall take effect on the 14th day of September, 1891, and remain in force and effect until canceled by the Commission.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of the amendments and modifications to Commodity Tariff No. 2, this day adopted by the Railroad Commission of Texas at the city of Austin, this 12th day of September, 1891.

J. J. ARTHUR, *Secretary.*

CIRCULAR No. 8.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, September 14, 1891.

It is ordered by this Commission that from and after the first day of October, 1891, all railroad companies in this State shall charge and collect from consignees the

sum of three (3) dollars per car per day for the use of all cars not unloaded after forty-eight (48) hours' notice to the consignee or his agent (not to include Sundays and legal holidays). The notice to consignees to unload cars must recite the penalty herein provided for.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

CIRCULAR No. 9.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, September 18, 1891.

Upon a reconsideration and fuller examination of the question as to whether or not a church is a charitable institution within the meaning of the law, and entitled to have freight carried free or at reduced rates, in the discretion of a railroad company, we conclude that the weight of authority is against the decision rendered July 14, 1891, in Circular No. 2, and we now decide that the railroads may in their discretion transport for the use of a church any freight free, or at reduced rates—under the provisions of Sec. 15, letter E of the Railroad Commission law.

JOHN H. REAGAN, *Chairman.*

Attest:

J. J. ARTHUR, *Secretary.*

CIRCULAR No. 10.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, September 19, 1891.

It is hereby ordered by the Railroad Commission of Texas that Commodity Tariff No. 3, adopted September 3, 1891, be modified and amended (as provided in Sec. 8 of the Commission law) to take effect September 3, 1891, as follows:

Exception No. 2 is changed to read as follows:

Exception No. 2.—Points on the Houston East & West Texas Railway north of Valda to the Sabine river shall

take the rate fixed from Valda by the mileage rate to all points in the State west of Houston.

Exception No. 4 is changed to read as follows:

Exception No. 4.—The rates now in force from points on the Texas & New Orleans Railroad and Sabine & East Texas, east of Houston to Houston and Galveston and all intermediate stations, shall remain in force.

Exception No. 5 is amended to read as follows:

Exception No. 5.—The rates now in force from points on the Houston, East & West Texas Railroad, north of Houston to Houston and Galveston and all intermediate stations, shall remain in force.

The following exceptions are added:

Exception No. 6. The rates now in force from points on the Trinity & Sabine branch of the Missouri, Kansas & Texas Railroad and the International & Great Northern Railroad from Trinity to Houston, to Houston and Galveston and all intermediate stations, shall remain in force.

Exception No. 7.—The rates now in force from milling stations on the Trinity & Sabine branch of the Missouri, Kansas & Texas Railroad, the International & Great Northern, Houston, East & West Texas, Texas & New Orleans, and Sabine & East Texas Railroads, to Corpus Christi, Rockport and Portland, shall remain in force.

The minimum weight per car of lumber, laths and shingles on the narrow gauge part of the E. L. & R. R. Railroad shall be 16,000 pounds.

Fencing manufactured of wire and lumber shall take the lumber rate.

The minimum weight per car on shipments originating on the Houston, East & West Texas Railroad shall be 20,000 pounds.

The regulation prescribing a charge of $5 per car for shipping lumber in transit, for planing, is abolished, and the railroads and shippers can adjust this charge to suit themselves.

In all cases where existing rates are continued in force railroads must file with the commission a copy of their tariffs, showing rates from mills to all points within the excepted territory.

JOHN H. REAGAN, *Chairman*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true copy of the amendments and modifications to Commodity Tariff No. 3, adopted by the Railroad Commission of Texas this the 19th day of September, 1891.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 10th day of September, 1891.

J. J. ARTHUR, *Secretary.*

CIRCULAR No. 11.

Amending Commodity Tariff No. 1.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, September 21, 1891.

Owing to the conflicting practices among railroads in applying the rates and regulations prescribed in Commodity Tariff No. 1, and the fact that the ruling of the commission of August 28, 1891, in regard to the application of the 10 per cent. allowed certain roads, and parts of roads, in its practical results gives them 20 per cent. on their locals, instead of 10 per cent., as intended, we find it necessary to change the ruling above mentioned, and make the following regulations in regard to applying the 10 per cent. addition under the Commodity Tariff No. 1:

1. To make a rate on a road not taking 10 per cent. increase to a point on a road taking 10 per cent. increase: First obtain the local of each road. (The local of the road authorized to add 10 per cent. to the tariff is the rate for the mileage freight as carried over such road, plus 10 per cent.) Deduct 20 per cent. of the sum of the two locals, and this will give the rate to be applied.

Example.—Take two roads, one of which is entitled to add 10 per cent., with a haul of fifty miles each; the local of the 10 per cent. road is 8 cents, plus 10 per cent., equal to 8.8 cents. The local of the other road is 8 cents; the sum of the two locals is 16.8 cents. Deduct 20 per cent., and the result shows the correct through rate, which is 13.5 cents.

Drop all fractions less than 1 1-10 in computing rates under Commodity Tariff No. 1.

The amendment to Commodity Tariff No. 1, adopted August 27, 1891, in Circular No. 5, authorizing bran to be

mixed with flour, in car loads, was not intended to change the rate on bran, which still takes the grain rate.

JOHN H. REAGAN,
L. L. FOSTER,
W. P. McLEAN, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 11, amending Commodity Tariff No. 1, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 1st day of September, 1891.

J. J. ARTHUR, *Secretary.*

CIRCULAR No. 12.

Amending Commodity No. 4.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, September 24, 1891.

It is hereby ordered by the Railroad Commission of Texas that Commodity Tariff No. 4, adopted September the 12th, and effective October the 5th, be amended as follows, to take effect October the 5th, 1891:

JOHN H. REAGAN, *Chairman,*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

Change the last line on page two (2) in the mileage column, to read "over 500 miles."

Amend the rate on cotton seed as follows:

5 miles and under, 4 cents per 100 pounds.
10 miles and over 5, 5 cents per 100 pounds.
15 miles and 10, 5½ cents per 100 pounds.
20 miles and over 15, 6 cents per 100 pounds.
30 miles and over 20, 7 cents per 100 pounds.
40 miles and over 30, 7½ cents per 100 pounds.
50 miles and over 40, 8 cents per 100 pounds.
60 miles and over 50, 8½ cents per 100 pounds.
80 miles and over 60, 9 cents per 100 pounds.
100 miles and over 80, 10 cents per 100 pounds.
120 miles and over 100, 11 cents per 100 pounds.

I hereby certify that the above is a true copy of the amendments and modifications to Commodity Tariff No. 3, adopted by the Railroad Commission of Texas this the 19th day of September, 1891.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 10th day of September, 1891.

J. J. ARTHUR, *Secretary.*

CIRCULAR No. 11.

Amending Commodity Tariff No. 1.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, September 21, 1891.

Owing to the conflicting practices among railroads in applying the rates and regulations prescribed in Commodity Tariff No. 1, and the fact that the ruling of the commission of August 28, 1891, in regard to the application of the 10 per cent. allowed certain roads, and parts of roads, in its practical results gives them 20 per cent. on their locals, instead of 10 per cent., as intended, we find it necessary to change the ruling above mentioned, and make the following regulations in regard to applying the 10 per cent. addition under the Commodity Tariff No. 1:

1. To make a rate on a road not taking 10 per cent. increase to a point on a road taking 10 per cent. increase: First obtain the local of each road. (The local of the road authorized to add 10 per cent. to the tariff is the rate for the mileage freight as carried over such road, plus 10 per cent.) Deduct 20 per cent. of the sum of the two locals, and this will give the rate to be applied.

Example.—Take two roads, one of which is entitled to add 10 per cent., with a haul of fifty miles each; the local of the 10 per cent. road is 8 cents, plus 10 per cent., equal to 8.8 cents. The local of the other road is 8 cents; the sum of the two locals is 16.8 cents. Deduct 20 per cent., and the result shows the correct through rate, which is 13.5 cents.

Drop all fractions less than 1 1-10 in computing rates under Commodity Tariff No. 1.

The amendment to Commodity Tariff No. 1, adopted August 27, 1891, in Circular No. 5, authorizing bran to be

mixed with flour, in car loads, was not intended to change the rate on bran, which still takes the grain rate.

JOHN H. REAGAN,
L. L. FOSTER,
W. P. McLEAN, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 11, amending Commodity Tariff No. 1, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 1st day of September, 1891.

J. J. ARTHUR, *Secretary.*

CIRCULAR No. 12.

Amending Commodity No. 4.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, September 24, 1891.

It is hereby ordered by the Railroad Commission of Texas that Commodity Tariff No. 4, adopted September the 12th, and effective October the 5th, be amended as follows, to take effect October the 5th, 1891:

JOHN H. REAGAN, *Chairman,*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

Change the last line on page two (2) in the mileage column, to read "over 500 miles."

Amend the rate on cotton seed as follows:

5 miles and under, 4 cents per 100 pounds.
10 miles and over 5, 5 cents per 100 pounds.
15 miles and 10, 5½ cents per 100 pounds.
20 miles and over 15, 6 cents per 100 pounds.
30 miles and over 20, 7 cents per 100 pounds.
40 miles and over 30, 7½ cents per 100 pounds.
50 miles and over 40, 8 cents per 100 pounds.
60 miles and over 50, 8½ cents per 100 pounds.
80 miles and over 60, 9 cents per 100 pounds.
100 miles and over 80, 10 cents per 100 pounds.
120 miles and over 100, 11 cents per 100 pounds.

I hereby certify that the above is a true and correct copy of Circular No. 12, amending Commodity Tariff No. 4, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 24th day of September, 1891.

J. J. ARTHUR, *Secretary.*

CIRCULAR No. 13.

OFFICE OF
RAILWAY COMMISSION OF TEXAS,
AUSTIN, TEXAS, October 1, 1891.

It is hereby ordered that hereafter, unless otherwise specified, freight may be hauled to and from any given points by any line or combination of lines at the rate fixed by the shortest mileage between such points, without affecting rates at intermediate points.

JOHN H. REAGAN, *Chairman.*
W. P. MCLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 13, this day adopted by the Railroad Commission of Texas.

Given under my hand and seal of the Railroad Commission of Texas at the city of Austin, this the 1st day of October, 1891.

J. J. ARTHUR, *Secretary.*

CIRCULAR No. 14.

Amending Commodity Tariff No. 3.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, October 2, 1891.

It is hereby ordered that Commodity Tariff No. 3, adopted September 3, 1891, and effective September 23, 1891, be amended by adding thereto Exception No. 8, as follows:

Exception No. 8.—Points on the Tyler Southwestern Railway, from Lufkin to Rusk, shall take their rates from Rusk by the above named tariff to all points in the State

west of Palestine on the International & Great Northern Railroad, and from Mineola on the Texas & Pacific Railway; provided, that the rates from Rusk to points west of Palestine on the International & Great Northern Railroad shall in no case be lower than the rates from Trinity station, and the rates from Rusk shall in no case be lower to points on the Texas & Pacific Railway, west of Mineola than the rate from Texarkana. The rates in force on the Tyler Southeastern Railway before the adoption of Commodity Tariff No. 3, from Lufkin and all intermediate points to Tyler shall remain in force from and after this amendment takes effect.

Effective October 12, 1891.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true copy of Circular No. 14, amending Commodity Tariff No. 3, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 2d day of October, 1891.

J. J. ARTHUR, *Secretary.*

CICULAR No. 15.

Amending Commodity Tariff No. 1.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, October 2, 1891.

It is hereby ordered by the Railroad Commission of Texas that Commodity Tariff No. 1, adopted August 13, 1891, and effective September 9, 1891, be amended as follows:

Rates on flour, meal, hominy and bran between Galveston and Houston shall be *five* (5) cents per one hundred pounds on car load lots.

Effective October 12, 1891.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 15, amending Commodity Tariff No.

1, this day adopted by the Railway Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 2d day of October, 1891.

J. J. ARTHUR, *Secretary.*

CIRCULAR NO. 16.

Amending Commodity Tariff No. 4.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, October 5, 1891.

It is hereby ordered that Commodity Tariff No. 4, adopted September 12, 1891, and effective October 5, 1891, be amended as follows:

RATES BETWEEN HOUSTON AND GALVESTON, EFFECTIVE OCTOBER 10, 1891.

Cotton seed.....5 cents per 100 pounds
Cotton seed meal and cake.... $1 per ton of 2240 pounds
Cotton seed hulls.....4 cents per 100 pounds
Cotton seed oil.....5 cents per 100 pounds
Cotton seed ashes.....5 cents per 100 pounds
on car load lots of 20,000 pounds or over.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 16, amending Commodity Tariff No. 4, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, this the 5th day of October, 1891.

J. J. ARTHUR, *Secretary.*

CIRCULAR No. 17.

Amending Commodity Tariff No. 1.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TAXAS, October 5, 1891.

It is hereby ordered that Commodity Tariff No. 1, adopted August 13, 1891, and effective September 9, 1891, be amended as follows:

RATES BETWEEN HOUSTON AND GALVESTON, EFFECTIVE OCTOBER 10, 1891.

Grain.....5 cents per 100 pounds.
Salt.....5 cents per 100 pounds.

JOHN H. REAGAN, *Chairman,*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 17, amending Commodity Tariff No. 1, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, this the 5th day of October, 1891.

J. J. ARTHUR, *Secretary.*

CIRCULAR No. 18

Amending Commodity Tariff No. 5.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, October 6, 1891.

It is hereby ordered that Commodity Tariff No. 5, adopted September 16, 1891, and effective October 8, 1891, be amended as follows:

RATES ON COAL BETWEEN POINTS ON THE RIO GRANDE & EAGLE PASS RAILWAY, EFFECTIVE OCTOBER, 6, 1891.

Rates in dollars and cents per ton of 2000 pounds for shipments as follows:

1500 tons or less	per month	$1 00
2000 tons and over 1500 tons	"	90
2500 tons and over 2000 tons	"	80
3000 tons and over 2500 tons	"	70

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 18, amending Commodity Tariff No. 5, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, this the 6th day of October, 1891.

J. J. ARTHUR, *Secretary.*

CIRCULAR No. 19.

Amending Commodity Tariff No. 6.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, October 6, 1891.

It is hereby ordered that Commodity Tariff No. 6, adopted September 21, 1891, and effective October 12, 1891, be amended as follows:

Rates on Cotton in bales from points named below to Houston and Galveston, effective October 21, 1891

IN CENTS PER ONE HUNDRED POUNDS.

FROM	TO Houston.	TO Galveston.	FROM	TO Houston.	TO Galveston.
Alvin	7	7	Keno	20	27
Arcadia	7	7	Kleiber	10	17
Arcola	10	10	Leslie	10	17
Beaumont	20	27	Mustang	10	10
Beeler	10	17	New Philadelphia	23	30
Clear Creek	7	7	Orange	20	27
Cleveland	15	22	Philips, (H. E. & W. T.)	12	19
Crabb	10	10	Piney Point	10	17
Crosby	10	17	Presswood	13	20
Dayton	15	22	Richmond	10	15
Devers	20	27	Rosenberg	12	19
Dickinson	7	7	Sheldon	10	17
Dukes	10	10	Shell Siding (I. & G. N.)	7	7
Dumont	7	7	Simonton	15	22
Eagle Grove	7	7	Sour Lake	20	27
East Bernard	20	27	Staffords	10	15
Fulshear	10	17	Thompson	10	10
Galveston	7	—	Virginia Point	7	7
Genoa	7	7	Walker	10	15
Harris	10	17	Websterville	7	7
Harrisburg	7	7	Weiss	30	37
Highland	7	7	Westheimer	10	17
Hitchcock	7	7	Whites	10	17
House	10	10	Wimberly	10	17
Jeanetta	10	17	Zimbi	10	17

JOHN H. REAGAN, *Chairman,*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 19, amending Commodity Tariff No. 6, this day adopted by the Railroad Commission of Texas.

Given under my hand and seal of the Railroad Commission of Texas, this the 6th day of October, 1891.

J. J. ARTHUR, *Secretary.*

CIRCULAR No. 20.

Rulings of the Commission, Effective October 19, 1891.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, October 19, 1891.

It is hereby ordered that all Commodity Tariffs on car load freights, heretofore issued by the Railroad Commission of Texas for application on continuous mileage, shall be subject to the following conditions:

1. When freight is shipped under such tariffs between points situated on different lines of railroad, the through rate may be made equal to the sum of the lowest rates named in the tariffs for the number of railroads forming a route between such points.

2. When rates based on continuous mileage afford one or more lines in a route proportions of revenue (in accordance with existing basis of divisions) in excess of the lowest rates, and other lines in the same route proportions less than the lowest rates named in a tariff, the through rates may be made by adding the proportions which are in excess of the lowest rates (in behalf of the lines receiving such proportions) to the lowest rates named in the tariff, in behalf of each of the other lines forming portions of such route.

3. The specifications of this circular shall afford no sanction for the adoption of fictitious bases of divisions for the purpose of increasing through rates.

4. When two or more routes of railroad extend from point of origin to destination, the route undertaking to transport freight between such points shall adopt the lowest rates applicable by any one of such routes regardless of the minimums herein provided.

JOHN H. REAGAN, *Chairman,*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 20, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, this the 7th day of October, 1891.

J. J. ARTHUR, *Secretary.*

Concerning Circular No. 20.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, October, 22, 1891.

Some inquiries as to the exact object and application of Circular No. 20 having reached the commission, the following illustrations are given for the information of all concerned:

1. The lowest rate in Commodity Tariff No. 3 is 4 cents, while the rate for 25 miles is 6 cents per 100 pounds. If this 20 miles is composed of the mileage of two lines, A and B, whose regular basis of divisions is A 55 per cent. and B 45 per cent., the proportions of the rate of 6 cents would be for A 3 3-10 and for B 2 7-10 cents per 100 pounds. Such proportions having been represented to the commission as unreasonably low, the first section of Circular No. 20 was made to secure to each of the lines, A and B, a revenue equal to 4 cents per 100 pounds, which is the lowest rate named in Commodity Tariff No. 3, thus making the through rate for the 25 miles in question 3 instead of 6 cents per 100 pounds.

2. The rate in the same tariff for 40 miles is 8 cents per 100 pounds. If the 40 miles is composed of the mileage of two lines, and B, whose regular basis of divisions is A 75 per cent. and B 25 per cent., the proportions of the rate of 8 cents would be for A 6 cents and B 2 cents per 100 pounds. Section 2 of circular secures to the line B a revenue of 4 cents per 100 pounds (the lowest rate in the tariff), without affecting the proportion of the line A, thus making the through rate for the 40 miles in question 10 instead of 8 cents.

A due regard for third and fourth sections of Circular No. 20 must in all cases be observed.

JOHN H. REAGAN, *Chairman.*

(See Circulars 26 and 35 *Post.*)

CIRCULAR No. 21.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, October 8, 1891.

It is ordered by this Commission, with the object of co-operating with the Interstate Commerce Commission in securing uniformity of railroad statistics throughout the entire country, that the Annual Report Form for the year ending June 30, 1891, prepared by the Interstate Commerce Commission and distributed by this Commission July 17, 1891, to the railroad companies in Texas, be considered as having been prepared by this Commission (under Section 12 of "An Act to establish a Railroad Commission for the State of Texas," etc., approved April 3, 1891); and it is further ordered that all railroad companies which have not filled out these forms properly and returned them to this Commission, do so within thirty days from the receipt of this order.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 21, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas this the 8th day of October, 1891.

J. J. ARTHUR, *Secretary.*

CIRCULAR No. 22.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, October 14, 1891.

It is ordered by this Commission that, in compliance with its duties under Sec. 11, of "An Act to establish a Railroad Commission for the State of Texas," etc., approved April 3, 1891, that a copy of the annexed Report Form, containing inquiries in accordance with said section of said act, be sent to each railroad company operating in the State of Texas, and that answers to said inquiries be filled out properly under the direction of the President (or other chief officer) and the Auditor (or other officer in charge of the accounts) of each railroad

company respectively, and attested by them, and by such officers, agents or persons as may prepare portions of the report—and be returned by them to this Commission within thirty days from the time of its receipt.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 22, this day issued by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 14th day of October, 1891.

J. J. ARTHUR, *Secretary.*

REPORT OF

The.....Rail.....Company to Railroad Commission of Texas for June 30, 1891.

1. What, on June 30, 1891, was the length of the main line of the said railroad? Of each branch? Of spurs used for traffic purposes? Of siding, yard and other track not included in the foregoing? And the aggregate length of track in Texas, computed as single track, owned by the said railroad company?

	MILES.
Length of main line from.....to.....	.....
Branch from .....to.....	.....
Branch from .....to	.....
Branch from .....to.....	.....
Branch from .....to.....	.....
Branch from .....to.....	.....
Branch from .....to.....	.....
Branch from .....to.....	.....
Spurs used for traffic purposes	.....
Siding, yard and other track not included in above...	.....
Aggregate length of track, computed as single track.....	.....

2. What was the total amount of money expended in the construction of the said railway up to and including June 30, 1891?

Right of way	
Other real estate necessary for depots, side tracks and shops	
Engineering expenses	
Grading and bridge and culvert masonry	
Bridges and trestles	
Rails	
Ties	
Fastenings, switch stands, etc.	
Fences	
Buildings, furniture and fixtures	
Shop machinery and tools	
Telegraph line	
Wharfing, etc	
Sidings and yard extensions	
Terminal facilities and elevators	

3. What was the total amount of money expended in the equipment of said railway up to and including June 30, 1891?

Locomotives	
Passenger cars	
Sleeping, parlor and dining cars	
Baggage, express and postal cars	
Combination cars	
Freight cars	
Other cars of all classes	
Floating equipment	

4. What was the total amount of money expended to June 30, 1891, to procure the right of way of the said railroad?

.....
.....
.....

5. What amount of money would it require to reconstruct the roadbed of the said railroad at this time?

6. What amount of money would it require to reconstruct the track of said railroad at this time?

7. What amount of money would it require to reconstruct the depots of said railroad at this time?

8. What amount of money would it require to construct the transportation (equipment) of the said railroad at this time?

Locomotives
Passenger cars
Sleeping, parlor and dining cars
Baggage, express and postal cars
Combination cars
Freight cars
Other cars of all classes
Floating equipment

9. What amount of money would it require to replace all the physical properties belonging to the said railroad June 30, 1891?

Roadbed										
Track										
Depots										
Furniture and fixtures										
Shop machinery&tools										
Telegraph line										
Equipment, as per answer to question No. 8										

10. What bonds, debentures and indebtedness of the said railroad were outstanding on June 30, 1891? The amount thereof? When issued? Rate of interest? When due? For what purposes issued? How used? To whom issued? To whom sold? The price in cash, property or labor, if any, received therefor? What became of the proceeds?

11. By whom was the indebtedness of said railroad on the June 30, 1891, held? And what was the amount then due on it?

12. What was the amount of the floating indebtedness of the said railroad company on June 30, 1891? To whom was it due? His, her or their address? Credits due on it?

13. On June 30, 1891, what property was on hand belonging to the said railroad company? And the values of same?

1st. The values of the kinds of property specified in the answers to questions numbers 2 and 3?

2d. The kinds and values of property not embraced therein?

14. Has there been any judicial or other sale or sales of the said railroad, its property or franchises? If so, what was the character of the sale? To whom was the sale made? What was the amount paid? And in what manner was it paid?

15. What were the amounts paid during the year ending June 30, 1891, for salaries of the various officers of the said railroad? And during the same period the rates of wages paid to its employes?

OFFICERS.	Total Yearly Compensation.	Average Daily Compensation.
EMPLOYES.		
General office clerks		
Station agents		
Other station men		
Enginemen		
Firemen		
Conductors		
Other train men		
Machinists		
Carpenters		
Other shop men		
Section foremen		
Other track men		
Switchmen, flagmen and watchmen		
Telegraph operators and dispatchers		
Employes—account floating equipment		
All other employes and laborers		

THE STATE OF TEXAS, }
COUNTY OF..... }

We, the undersigned,..... President, and .....Auditor, of the..... .....Rail.....Company.....Being duly sworn, severally depose and say that we caused the foregoing answers to be prepared by the proper officers and agents of the said company, and having carefully examined the same, declare them to be true, full and correct statements concerning the condition and affairs of the said company, in respect to each and every matter and thing therein set forth, on the 30th day of June, A. D. 1891, to the best of our knowledge and belief.

.....*President.*
(Or Other Chief Officer.)

.....*Auditor.*
(Or Other Officer in Charge of the Accounts.)

Subscribed and sworn to before me this....day of.... A. D. 189..

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(NOTE.—Each officer, agent, or other person preparing any part of this report shall make affidavit of the truth of the same.)

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CIRCULAR No. 23.

Amending Commodity Tariff No. 6.

OFFICE OF
RAILROAD COMMISSION OF TEXAS.
AUSTIN, TEXAS, October 13, 1891.

It is hereby ordered that Commodity Tariff No. 6, adopted September 21, 1891, and effective October 12, 1891, be amended as follows:

RATES ON COTTON IN BALES.

From points named below to Houston and Galveston, effective October 21, 1881—in cents per 100 pounds.

FROM—TO	R. R. Line.	Houston.	Galveston.
Kleiber	H. E. & W. T.	10	17
Porter		12	19
Presswood		13	20
Cleveland		15	22
Keno		20	27
Napier		30	37
Shepherd		30	37
Goodrich		30	37
Arcola	L. & G. N.	10	10
Elm Grove		19	25
Sandy Point		20	25
Chenango		24	30
East Columbia		25	30
Dodge		35	42
Huntsville		35	42
Phelps		33	40
Waverly		30	37
Willis		30	37
Harrisburg		7	7
Dumont		7	7
Genoa		7	7
Websterville		7	7
Clear Creek		7	7
Shell Siding		7	7
Dickinson		7	7
Highland		7	7
Virginia Point		7	7
Eagle Grove		7	7
Galveston		7	
Westheimer	Texas Western.	10	17
Piney Point		10	17
Beeler		10	17
Zimbi		10	17
Wimberly		10	17
Leslie		10	17
Pattison		20	27
Clemons		22	29
San Felipe		25	32
Sealy		25	30
Jeanette	S. A. & A. P.	10	17
Clodine		10	17
White		10	17
Fulshear		10	17
Harris		10	17
Simonton		15	22
Carlton		20	25
Wallis		20	25
Ficklin		24	31
Eagle Lake		25	32
Altair		30	37
Cypress	H. & T. C.	20	27
Hockley		25	32
Hempstead		30	37
Courtney		31	38
Chappell Hill		31	38

FROM—TO	R. R. Line.	Houston.	Galveston.
Sheldon	T. & N. O.	10	17
Crosby		10	17
Dayton		15	22
Liberty		20	27
Devers		20	27
Sour Lake		20	27
Beaumont		20	27
Orange		20	27
Weiss	S. & E. T.	30	37
Kountze		40	47
Village		40	47
Woodville		40	47
Colmesneil		40	47
Summit		40	47
Rockland		45	52
Staffords	G. H. & S. A.	10	15
Walker		10	15
Richmond		10	15
Rosenberg		12	19
East Bernard		20	27
New Philadelphia		23	30
Eagle Lake		25	32
Alleyton		33	40
Galveston	G. C. & S. F.	7	
Eagle Grove		7	7
Virginia Point		7	7
Hitchcock		7	7
Arcadia		7	7
Alvin		7	7
Mustang		10	10
Arcola		10	10
Dukes		10	10
House		10	10
Thompson		10	10
Crabb		10	10
Richmond		10	15
Rosenberg		12	19
Dyer		20	20
Wallis		20	25
Sealy		25	30
Millheim		32	34
Bellville		33	36
Kenney		35	40
Phillips		36	43
Gay Hill		39	45
Quarry		39	45
Somerville		40	45
Clay		39	45
Alleyfarm		38	45
Lyons		40	45
All stations on Trinity and Sabine Railway except Trinity		40	47

Circular No. 19, adopted by the Railroad Commission of Texas October 6, 1891, and effective October 22, 1891, will be hereby canceled.

JOHN H. REAGAN, *Chairman.*
L. L. FOSTER,
W. P. McLEAN, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 23, amending Commodity Tariff No. 6, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 15th day of October, 1891.

J. J. ARTHUR, *Secretary.*

(See Circular 31 *Post.*)

CIRCULAR No. 24.

Amending Commodity Tariff No 9.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, October 17, 1891.

It is hereby ordered that Commodity Tariff No. 9, adopted October 16, 1891, and effective November 5, 1891, be amended as follows:

Rate on coal in car loads, effective November 5, 1891:

From Eagle Pass to San Antonio, $1 per ton of 2000 pounds.

JOHN H. REAGAN, *Chairman.*
W. P. MCLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 24, amending Commodity Tariff No. 9, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 7th day of October, 1891.

J. J. ARTHUR, *Secretary.*

CIRCULAR No. 25.

Amending Commodity Tariff No. 6.

OFFICE OF THE
RAILROAD COMMISSION OF TEXAS,
AUSTIN TEXAS, October, 17, 1891.

It is ordered by the Railroad Commission of Texas that the following amendment is hereby made to Commodity Tariff No. 6, viz:

1. In order to equalize the rates on shipments of cotton made from points where there are no compresses, with those on shipments from points at which there are compresses, it is ordered that in all cases where cotton shall be received by the railroads uncompressed at points having no compresses, such railroads may have such cotton compressed before it arrives at the point of destination in Texas; and in case such cotton is compressed before reaching such destination, and the expenses of compressing shall be paid by the railroad carrying such cotton, the rate shall be ten (10) cents per hundred pounds more than the rate prescribed for compressed cotton in Commodity Tariff No. 6, to defray the expense of compressing.

2. If uncompressed cotton shall be shipped from points having no compresses to points in Texas, and the railroad or railroads carrying the same shall refuse to have it compressed, as provided in first section of this order, before reaching its destination in Texas, the rate on such shipments shall be the same as is prescribed in said Tariff No. 6, on compressed cotton.

3. If any shipper of uncompressed cotton shall prefer to have the same carried to its destination without being compressed, he may so direct its shipment, and in such case the rate on the same shall be ten (10) cents per hundred pounds more than the rate prescribed by said Tariff No. 6 on compressed cotton.

4. On all shipments of uncompressed cotton received by railroads, if such railroads intend to avail themselves of the provisions of the first section of this circular, the bills of lading shall in every instance specify that such cotton is to be compressed in transit, and the expenses of compressing to be paid by the carrier. And if from any cause such cotton shall not be compressed, any excess in

the freight charges over the rate on compressed cotton, as provided in said Tariff No. 6, shall be an overcharge, and if collected shall be refunded.

5. It is not intended that the provisions of this circular shall affect the provisions of Commodity Tariff No. 6 in respect to the concentration of cotton at compress points, nor any other of the provisions of said Tariff not in conflict herewith.

6. This order shall take effect and be in force on and after the 21st day of October, 1891.

JOHN H. REAGAN, *Chairman,*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 25, amending Commodity Tariff No. 6 this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas at the City of Austin, this 17th day of October, 1891.

J. J. ARTHUR, *Secretary,*
(See Circular 31 *Post.*)

CIRCULAR No. 26.

Amending Commodity Tariff No. 9.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, October 19, 1891.

It is hereby ordered that Commodity Tariff No. 9, adopted October 16, 1891, be amended as follows:

1. The minimum on wood on narrow guage railroads six (6) cords per car.

2. The Texas Transportation Company and Brownsville & Gulf Railroad are exempted from the operation of the above named tariff.

3. Commodity Tariff No. 9 is exempted from the conditions in Circular No. 20 (relating to minimum charges).

Effective November 5, 1891.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct

copy of Circular No. 26, amending Commodity Tariff No. 9, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, this the 19th day of October, 1891.

J. J. ARTHUR, *Secretary.*

CIRCULAR No. 27.

Amending Commodity Tariff No. 3, Effective Nov. 11, 1891.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, October 21, 1891.

It is hereby ordered that Commodity Tariff No. 3 adopted by the Railroad Commission of Texas, September 1, 1891, be amended as follows:

Cancel all exceptions to Commodity Tariff No. 3, as heretofore authorized, and substitute therefor the following

EXCEPTIONS:

1. Existing rates on lumber to Houston, Galveston and intermediate points from points on the following described lines of railroad shall remain in force:

Houston, East & West Texas Railway.
Trinity & Sabine Railway.
Texas & New Orleans Railroad.
Sabine & East Texas Railway.
International & Great Northern Railroad, Trinity and stations south thereof.

2. Existing rates on lumber to Corpus Christi, Rockport and Portland from points on the following named lines of railroad remain in force:

Houston, East & West Texas Railway.
Trinity & Sabine Railway.
Texas & New Orleans Railroad.
Sabine & East Texas Railway.
International & Great Northern Railroad.

3. Rates fixed by mileage from Houston shall apply on lumber between points as described below:

From milling points on
Texas & New Orleans Railroad, all stations.

Sabine & East Texas Railroad, all stations.

Trinity & Sabine Railway, all stations.

Houston, East & West Texas Railway, Corrigan and stations south thereof.

International & Great Northern Railroad, Trinity and stations south thereof.

To points on

Houston & Texas Central and Texas Central Railways, Groesbeck and stations south thereof, including Roberts, Denison and Fort Worth, and Waco, Albany and intermediate points.

Missouri, Kansas & Texas Railway, Waco and stations north thereof.

Gulf, Colorado & Santa Fe Railway, McGregor and stations north thereof.

Texas & Pacific Railway, stations west of Paris and Mineola.

Fort Worth & Denver City Railway, all stations.

Weatherford, Mineral Wells and Northwestern Railway, all stations.

Texas Trunk Railway, all stations.

Fort Worth & Rio Grande Railway, stations north of Dublin.

Wichita Valley Railway, all stations.

Pecos Valley Railway, stations in Texas.

Southern Kansas Railway, stations in Texas.

Paris & Great Northern Railway, all stations.

St. Louis Southwestern Railway, stations west of Wolf City, Greenville and Corsicana.

Provided: 1. That rates from milling points, as described in this paragraph, to intermediate points south of Groesboeck, Waco and McGregor shall not exceed the rates to Groesbeck, Waco and McGregor. 2. That when rates fixed by mileage from milling points east and north of Longview, West of Texarkana on St. Louis Southwestern Railway and west of Jefferson on East Line & Red River Railroad to points north of Groesbeck, Waco and McGregor, as herein described, are higher than the rates fixed by mileage from Houston to said points, rates from Houston may be adopted for application from such milling points north and east of Longview, west of Texarkana and west of Jefferson.

4. Rates from stations on the Texas & New Orleans Railroad, east of Beaumont, and on the Sabine & East

Texas Railway shall, except as provided for in the first, second and third paragraphs hereof, be fixed by mileage from Beaumont.

5. Rates from stations on the Houston, East & West Texas Railway, Valda and stations north thereof in Texas, to all points north, west and southwest of Houston, shall, except as provided for in first, second and third paragraphs hereof, be fixed by mileage from Valda.

6. Rates from stations on the Tyler Southeastern Railway, south of Rusk and Lufkin inclusive, to points in the State west of Palestine on the International & Great Northern Railroad, and west of Mineola on the Texas & Pacific Railway, shall be fixed by mileage from Rusk.

Provided: 1. That rates made by employing the mileage of the International & Great Northern Railroad shall not be lower than the rates from Trinity. 2. That rates made by employing the mileage of the Texas & Pacific Railway shall not be lower than the rates from Texarkana.

7. Rates from points on the Trinity & Sabine Railway to points on the International & Great Northern Railroad north of Palestine, and all points west of the International & Great Northern Railroad between Longview and Galveston, shall, except as provided for in first, second and third paragraphs hereof, be fixed by mileage from Trinity.

8. Rates fixed by mileage from Longview shall apply between points as described below:

From milling points in Texas east and north of Longview to points on

International & Great Northern Railroad, Hearne to Laredo and Georgetown, inclusive.

Austin & Northwestern Railway, all stations.

San Antonio & Aransas Pass Railway, south of Rockdale and west of Wallis.

Gulf, Colorado & Santa Fe Railway, main line south of Milano.

Missouri, Kansas & Texas Railway, south of Taylor.

Houston & Texas Central Railway, west of Brenham.

Galveston, Harrisburg & San Antonio Railway, west of Rosenberg.

New York, Texas & Mexican Railway, all stations.

Gulf, Western Texas & Pacific Railway, all stations.

Texas Mexican Railway, all stations.

Provided: 1. That when rates fixed by mileage from Longview to points as above described are lower than rates fixed by the terms of 4th, 5th and 7th paragraphs hereof, such lower rates may be adopted for application from milling points as described in the said 4th, 5th and 7th paragraphs. 2. That the rates from milling points north and east of Longview to intermediate points north of Hearne shall not exceed the rates to Hearne. 3. That when rates fixed by mileage from Longview to points as described above are lower than rates fixed by mileage from milling points on the St. Louis Southwestern Railway west of Texarkana, and on the East Line and Red River Railway west of Jefferson, such lower rates may be adopted for application from the said milling points west of Texarkana and west of Jefferson.

9. When two or more routes of railroad extend from point of origin to destination, the lowest rates applicable under this tariff by any one of such routes may be adopted by the other routes interested without affecting rates at intermediate points on such routes.

NOTE.—When rates fixed by mileage direct from milling points are lower than those obtainable under the specifications of the foregoing exceptions, such lower rates shall govern.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 27, amending Commodity tariff No. 3, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Aastin, this the 21st day of October, 1891.

J. J. ARTHUR, *Secretary.*

CIRCULAR NO. 28.

Establishing Rules and Conditions for the Disposition of Certain Freights after Arrival at Destination.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, NOVEMBER 22, 1891.

The following rules and conditions governing the dis-

position of freights, as described, after their arrival at destination shall take effect November 2, 1891.

1. Sundays and legal holidays shall not form portions of any periods of time herein designated.

2. Every railroad company, upon whose line the point of destination of car load freights is situated, shall place the cars containing such freights in position suitable for unloading within twenty-four (24)hours after their arrival.

3. Every railroad company, through its agents at points of destination, at which car-load freights arrive, shall, without delay after such, arrival, serve consignees or their agents with written notice of same, such notice to be regarded as operative only from the time at which cars are placed in position for unloading.

The method of giving notice shall be by delivering the notice to the consignee or his agent in person, or by leaving the same at his usual place of business in the town or city in which the railroad depot is situated; or by depositing the notice in the postoffice of such town or city, when the consignee or his agent resides without the town; and when merchandise is shipped to a station where there is no railroad agent, the notice aforesaid shall be given by the railroad agent to whom the way-bill is delivered.

4. Consignees or their agents failing to remove car-load freights from the cars within forty-eight (48) hours after the cars shall have been placed in position for unloading, shall pay to the railroad company one (1) dollar per day for each car remaing unloaded for the first five (5) days, and thereafter three (3) dollars per day for each car remaining unloaded; computing the time for such charges from the expiration of the said forty-eight (48) hours.

5. Consignees or owners of car-load freights especially requesting a railroad company to hold such freights in cars beyond the forty-eight hours after cars have been placed in position for unloading, shall be subject to the same obligations of payment as established by 4th paragraph hereof.

6. Consignees or their agents failing or refusing to unload cars within forty-eight (48) hours from the time notice of arrival is served and cars are placed in position for unloading, the railroad company shall have the privi-

lege of unloading such cars and storing the merchandise, and having unloaded the cars, shall charge and collect one (1) dollar per car for such service before delivering the merchandise to consignee or their agents.

Circular No. 8 adopted by the Railroad Commission of Texas September 14, 1891, and effective October 1, 1891, will be hereby canceled.

JOHN H. REAGAN, *Chairman,*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 28, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas at the city of Austin, this the 22d day of October, 1891.

J. J. ARTHUR, *Secretary.*

(See Circular 30 *Post.*)

CIRCULAR No. 29.

Amending Commodity Tariff No. 10.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, October, 31, 1891.

It is hereby ordered that Commodity Tariff No. 10, adopted by the Railroad Commission of Texas October 16, 1891, and effective November 5, 1891, be amended by the addition of the following exceptions, which shall become effective November 5, 1891:

SEVENTH EXCEPTION.

Brick transported in car loads over narrow-gauge railroads shall be subject to a minimum of 5000 brick per car.

EIGHTH EXCEPTION.

The rate on sand transported from a point on the Houston, East & West Texas Railway at the San Jacinto river to Houston, shall be $5 car.

JOHN H. REAGAN, *Chairman.*

I hereby certify that the above is a true and correct copy of Circular No. 29, amending Commodity Tariff No.

10, this day adopted by the Railroad Commission of Texas.

J. J. ARTHUR, *Secretary.*

(See Circular 32 *Post.*)

CIRCULAR No. 30.

Amended Circular No 28.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, October 31, 1891.

It is hereby ordered by the Railroad Commission of Texas that the provisions of Circular No. 28 shall not apply to cars loaded with freight for the places named below when such freight is destined to consignees whose places of business are situated away from the railroads on which said places are located.

Pena and *Aguilares* on the Texas Mexican Railway.

Marfa on the Galveston, Harrisburg & San Antonio Railway.

The above exceptions shall take effect November 2, 1891.

JOHN. H. REAGAN, *Chairman.*

I hereby certify that the above is a true and correct copy of Circular No. 30, amending Circular No. 28, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 31st day of October, 1891.

J. J. ARTHUR, *Secretary.*

CIRCULAR No. 31.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, November 2, 1891.

This commission having learned that there is some misunderstanding existing as to the rates on *cotton* shipped from points named in Circular No. 23, the following rules and explanations are made for the government of all concerned:

1. The rates fixed in said circular are the rates in force from the points named before the establishment of any

rates by this commission, except as affected by the differential between Houston and Galveston, and the practice in respect to compressing in existence under the old rates from said points has not been disturbed.

2. Tariff No. 6 makes a rate on compressed cotton, and the rates named in Circular No. 23 are on *cotton in bales*, and no difference is made or intended between compressed and uncompressed cotton.

3. The provisions of Circular No. 25 in regard to compressing apply to shipments under Tariff No. 6 alone, and have no application to shipments made from points named in Circular No. 23.

It is therefore ordered that the rates fixed in Circular No. 23 shall apply to shipments from the points therein named alike on compressed and uncompressed cotton, and that Circular No. 25 has and shall have no application to such shipments.

JOHN H. REAGAN, *Chairman.*
W. P. MCLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 31, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas at the city of Austin, this the 2nd day of November, 1891.

J. J. ARTHUR, *Secretary.*

CIRCULAR No. 32.

Amended Circular No. 29.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, November 2, 1891.

The dates mentioned in Circular No. 29 issued by this commission October 31, 1891, should be as follows:

Those referring to Commodity Tariff No. 10 should be "adopted *October 26, 1891*, and effective *November 16, 1891*," instead of October 16 and November 5, respectively.

Change the date upon which Circular No. 29 shall take effect from November 5 to *November 16, 1891.*

JOHN H. REAGAN, *Chairman.*

Attest:

J. J. ARTHUR, *Secretary.*

CIRCULAR No. 33.

Amending Commodity Tariff No 10.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, November 10, 1891.

The fifth exception under Tariff No. 10 is intended to fix the rate on stone hauled for the purposes named, and the rate therein named is not subject to the provisions of the first exception under said tariff.

JOHN H. REAGAN, *Chairman.*

Attest:

J. J. ARTHUR, *Secretary.*

CIRCULAR No. 34.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, November 6, 1891.

The following rules and rates are hereby established to govern the reception, delivery and transportation of loaded cars from point to point on all railroads within this State, and shall become effective November 27, 1891.

First—When any railroad may wish to have a loaded car or cars hauled to any point on a connecting line or over a connecting line or lines to some point on any of such connecting lines; or when any other party may wish to have a loaded car or cars hauled over any railroad to a point over its lines or to a point on any connecting line or lines, such loaded cars shall be tendered to the road which it may be desired by such railroad or other party to receive such loaded cars at a station on its line, and on its track if such receiving road shall so desire and demand.

Second—When such loaded car shall be so tendered, it shall be received and transported to its destination by the road to which tendered, if destined to a point on its line, and if destined to a point on some connecting line or lines,

then it shall be transported to the next connecting line in the route over which shipped, and delivered to such connecting road to be transported to the point of destination.

Third—The rate of transportation on loaded cars so tendered shall be upon the commodity or property with which they are loaded without regard to the fact as to what road said cars belong; and the rates shall be the same as are established or in use for like commodities when hauled in the cars belonging to the roads over which the same are hauled.

Fourth—The provisions of this circular shall apply only to loaded cars which have arrived at the point of original destination and which it may become necessary or desirable to reship to another destination within this State without unloading, and to such as may be loaded at the point when tendered for shipment.

Fifth—Every railroad company hauling loaded cars destined to be carried to a point on a connecting line or to be carried over a connecting line or lines, and upon which through bills of lading to the points of destination have not been given by the road upon which the same originated, shall deliver said loaded cars at the designated point of junction with the connecting line to the road over which said loaded cars are to be carried without unloading the same if so requested, and the road or roads on or over which such loaded cars may be carried shall pay to the road owning the cars the established rate for the use of such cars; and when such cars shall have been unloaded, the same shall be returned to the road to which they belong by the road or roads so using them, free of charge to the owner.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 34, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 6th day of November, 1891.

J. J. ARTHUR, *Secretary.*

CIRCULAR No. 35.

Cancelling Circular No. 20.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, November 6, 1891.

It is hereby ordered that Circular No. 20, issued October 7, 1891, and effective Octoder 19, 1891, be canceled; this order to take effect and be in force on and after November 26, 1891.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 35, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 6th day of November, 1891.

J. J. ARTHUR, *Secretary.*

CIRCULAR No. 36.

Amending Commodity Tariff No. 10, Effective November 15, 1891.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, November 7, 1891.

It is hereby ordered that Commodity Tariff No. 10, adopted by the Railroad Commission of Texas October 16, 1891, and effective November 15, 1891, be amended by adding thereto the following exceptions, to take effect and be in force on and after November 15, 1891:

NINTH EXCEPTION.

Existing rates on sand from Mackey's Switch and all intermediate points on the San Antonio & Aransas Pass Railway to San Antonio, and from Kingsbury on the Galveston, Harrisburg & San Antonio Railway to San Antonio, shall remain in force.

TENTH EXCEPTION.

The rate on brick from Galveston, on the San Antonio & Aransas Pass Railway to San Antonio, shall be $1 per 1,000 brick.

ELEVENTH EXCEPTION.

Minimum number of fire brick per car shall be 5000.

TWELFTH EXCEPTON.

Existing rates on lime rock shipped for smelting purposes from any point to any iron furnace in the State shall remain in force, unless the rates prescribed in this tariff are less.

Fifth exception is changed to read as follows: Rates on stone for jetty work, at any point where work is being done under contract with the United States Government or private persons or corporations, for the improvement of the rivers, bayous or harbors of Texas, shall be as follows: Except where a lower rate shall have been contracted for, in which case the contract rate shall obtain; 160 miles or less 7 cents per 100 pounds, except where the mileage carries a less rate under this tariff.

JOHN H. REAGAN, *Chairman,*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 36, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 7th day of November, 1891.

J. J. ARTHUR, *Secretary.*

CIRCULAR No. 37.

Amending Commodity Tariff No. 3.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, November 11, 1891.

It is hereby ordered that the application of Commodity Tariff No. 3, adopted by the Railroad Commission of Texas September 1, 1891, and effective September 23, 1891, together with its rules, conditions and exceptions, be extended to include shipments of Wooden Fence Posts and Piling in car loads; such application to take effect and be in force on and after December 2, 1891; provided, that lower rates published in the tariffs below designated, for local application between stations on the lines of the rail-

road companies having issued them, shall remain in force:

Gulf, Colorado & Santa Fe Railway Local Tariff No. 321, A—effective July 7, 1891.

International & Great Northern Railroad Freight Tariff No. 26, effective July 4, 1891.

Houston & Texas Contral Railway Local Commodity Tariff No. 11, B—effective September 6, 1890, including railroad lines therein named.

JOHN H. REAGAN, *Chairman*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 37, amending Commodity Tariff No. 3, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 11th day of November, 1891.

J. J. ARTHUR, *Secretary.*

CIRCULAR No. 38.

Amending Commodity Tariff No. 10.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, November 11, 1891.

It is hereby ordered that Commodity Tariff No. 10, adopted by the Railroad Commission of Texas October 16, 1891, and effective November 15, 1891, be amended by adding thereto the following exception, to take effect and be in force on and after November 15, 1891:

13th Exception.—Existing rates on *stone*, car loads, to San Antonio from Balcones, Waring and Kerrville, stations on the San Antonio & Aransas Pass Railway, shall remain in force.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 38, amending Commodity Tariff No. 10, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 11th day of November, 1891.

J. J. ARTHUR, *Secretary.*

CIRCULAR NO. 39.

Amending Commodity Tariff No. 3.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, November 12, 1891.

It is hereby ordered that Commodity Tariff No. 3, adopted by the Railroad Commission of Texas September 1, 1891, and effective September 23, 1891, be amended by adding thereto the following exceptions, which shall become affective and be in force on and after November 23, 1891.

10th Exception.—The rates on the commodities named in Commodity Tariff No. 3, between Houston and Galveston and intermediate points, shall be five (5) cents per 100 pounds.

11th Exception.—The rates on lumber to Tyler from Lufkin and intermediate stations on the Tyler Southern Railway, in force prior to the adoption of Commodity Tariff No. 3, are hereby restored for application, except in cases where the mileage rates prescribed in said Commodity Tariff No. 3 are lower.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 39, amending Commodity Tariff No. 3, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, in the city of Austin, this the 12th day of November, 1891.

J. J. ARTHUR, *Secretary.*

CIRCULAR No. 40.

Amending Commodity Tariff No. 3.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, November 14, 1891.

It is hereby ordered that Commodity Tarifi No. 3,

adopted by the Railroad Commission of Texas September 1, 1891, and effective September 23, 1891, be amended by adding thereto the following exception, which shall become effective and be in force on and after November 24, 1891:

12th Exception.—The rates on lumber to Tyler from Trinity and intermediate stations on the International & Great Northern Railroad, in force prior to the adoption of Commodity Tariff No. 3, are hereby restored for application, except in cases where the mileage rates prescribed in said Commodity Tariff No. 3 are lower.

JOHN H. REAGAN, *Chairman,*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 40, amending Commodity Tariff No. 3, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 14th day of November, 1891.

J. J. ARTHUR, *Secretary.*

CIRCULAR No. 41

Amending Commodity Tariff No. 4.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, November 20, 1891.

It is hereby ordered that Commodity Tariff No. 4, adopted September 12, 1891, and effective October 5, 1891, be amended as follows—effective December 1, 1891:

Rates in dollars per car on crude cotton seed oil in tanks, between Honey Grove and Paris, Texas, ten (10) dollars per car.

JOHN H. REAGAN,
L. L. FOSTER,
W. P. McLEAN, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 41, amending Commodity Tariff No. 4, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, this the 21st day of November, 1891.

J. J. ARTHUR, *Secretary.*

CIRCULAR No. 42.

Amending Commodity Tariff No. 3.

OFFICE OF
RAILWAY COMMISSION OF TEXAS,
AUSTIN, TEXAS, November 20, 1891.

It is hereby ordered that Commodity Tariff No. 3, adopted by the Railroad Commission of Texas September 1, 1891, and effective September 23, 1891, be amended by adding thereto the following exception, which shall become effective and be in force on and after December 1, 1891:

13th Exception.—The rate of 11 1-2 cents per 100 pounds on lumber to Tyler from all stations on the Trinity and Sabine branch of the Missouri, Kansas & Texas Railway, in force prior to the adoption of Commodity Tariff No. 3, is hereby restored for application, except in cases where the mileage rates prescribed in said Commodity Tariff No. 3 are lower.

JOHN H. REAGAN, *Chairman,*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the abover is a true and correct copy of Circular No. 42, amending Commodity Tariff No. 3, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this 20th day of November, 1891.

J. J. ARTHUR, *Secretary.*

CIRCULAR No. 43.

Providing divisions of rates between Houston & Texas Central and Fort Worth & Denver City Railway, on all shipments under Commodity Tariff No. 3 and amendments thereto.

OFFICE OF THE
RAILROAD COMMISSION OF TEXAS.
Austin, Texas, Novmeber 21, 1891.

The Houston & Texas Central and Fort Worth & Denver City Railway Companies having failed to agree upon a division of freight charges arising from the transportation of commodities included in Commodity Tariff No. 3, and the amendments thereto established by this commis-

sion over said two roads, and the subject of said division having come before the commission for adjustment as provided in subdivision (*f*), section (3) of the commission law, the following shall be the respective shares of said roads on all freight charges arising from the joint transportation of said commodites over said two roads from this date:

Divisions of rates on commodities named in Commodity Tariff No. 3 and amendments thereto from stations on the Texas & New Orleans Railroad and Sabine & East Texas Railway to stations on the Fort Worth & Denver City and Wichita Valley Railways.

Stations on Fort Worth & Denver City Railway.	Through Rates.	To Houston.	H. & T. R'y.	F. W. D. & C. R'y.
Hodge	19	4.7	10.3	4
Saginaw	19	4.7	10.3	4
Calef	19	4.7	10.3	4
Avondale	19	4.7	10.3	4
Rhome	19	4.7	10.3	4
Herman	20	4.9	10.8	4.3
Decatur	20	4.9	10.6	4.5
Cowan	20	4.8	10.3	4.9
Alvord	20	4.7	10.2	5.1
Sunset	20	4.6	10.1	5.3
Bowie	20	4.5	9.8	5.7
Bellevue	21	4.6	10	6.4
Alma	21	4.5	9.8	6.7
Henrietta	21	4.4	9.6	7
Carlyle	21	4.3	9.3	7.4
Wichita Falls	21	4.3	9.3	7.4
Iowa Park	21	4.3	9.3	7.4
Rutherford	22	4.4	9.5	8.1
Beaver	22	4.4	9.5	8.1
Harrold	22	4.4	9.5	8.1
Oklaunion	22	4.4	9.3	8.3
Vernon	22	4.4	9.3	8.3
Wheatland	22	4.4	9.3	8.3
Chillicothe	23	4.5	9.8	8.7
Evans	23	4.5	9.8	8.7
Quanah	23	4.5	9.8	8.7
Gypsum	23	4.5	9.8	8.7
Kirkland	23	4.4	9.5	9.1
Childress	23	4.4	9.5	9.1
Carey	24	4.6	10	9.4

Stations on Fort Worth & Denver City Railway and Wichita Valley Railway.	Through Rates.	To Houston.	H. & T. C. R'y.	F. W. & D. C. R'y.	Wichita Valley R'y
Newlin	24	4 6	10	9.4	
Salisburg	24	4.6	10	9.4	
Memphis	24	4.6	10	9.4	
Giles	24	4.5	9.8	9.7	
Rowe	24	4.5	9.8	9.7	
Lelia	24	4.5	9.8	9.7	
Clarendon	25	4.7	10.1	10.2	
South- d	25	4.7	10.1	10.2	
Goodnight	25	4.7	10.1	10.2	
Claude	25	4.6	10	10 4	
Washburn	25	4.6	10	10.4	
Panhandle City	26	4.8	10.3	10.9	
Pullman	26	48.	10.3	10 9	
Amarillo	26	4.8	10.3	10.9	
Sanborn	26	4.8	10.3	10.9	
Field	26	4.7	10.1	11.2	
Ady	26	4.7	10.1	11.2	
Tascoso	26	4.7	10.1	11.2	
Cheyenne	26	4.7	10.1	11.2	
Channing	27	4.8	10.5	11.7	
Duncan	27	4.8	10.5	11.7	
Hartly	27	4.8	10.3	11.9	
Twist	27	4.8	10.3	11.9	
Matlock	27	4.8	10.3	11.9	
Dallam	28	4.9	10.7	12.4	
Farwell	28	4.9	10.7	12.4	
Texline	28	4.8	10.5	12.7	
Holliday	21	3.9	8.5	6.8	1.8
Dundee	22	3.9	8.4	6.6	3.1
Seymour	22	3.7	8	6.3	4

NOTE:—The basis employed for the above division consists in allotting to each line, as its factor, the local rate as prescribed by Commodity Tariff No. 3 and the amendment thereto and then making the divisions of the through rates proportionate to such factors.

The columns in the table indicating the shares of the roads east of Houston and the Wichita Valley Railway are not intended as a division of charges with those roads, but only indicate the basis upon which adjudication is made.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 43, providing divisions of rates between the Houston & Texas Central Railway and Fort Worth & Denver City Railway on all shipments under Commodity Tariff No. 3, and amendments thereto, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 2nd day of December, 1891.

J. J. ARTHUR, *Secretary.*

CIRCULAR No. 44.

Changing the Minimum Weight Per Car on Hay Provided for in Circular No. 5, Amending Commodity Tariff No. 1

OFFICE OF
RAILROAD COMMISSION OF TEXAS.
AUSTIN, TEXAS, November 21, 1891.

It is hereby ordered that so much of Circular No. 5, adopted August 27, 1891, as relates to the fixing of a minimum car load of hay on standard gauge roads under Commodity Tariff No. 1, be amended to read as follows:

Hay, minimum weight per car load, 17,000 pounds.

Effective December 10, 1891.

JOHN H. REAGAN, *Chairman.*
W. P. MCLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 44, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 21st day of November, 1891.

J. J. ARTHUR, *Secretary.*

CIRCULAR No. 45.

Exempting the Pecos Valley Railway Company from the operation of all Commission Tariffs.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, November 21, 1891.

It is hereby ordered that the Pecos Valley Railway Company be exempted from the operation of all tariffs

issued and to be issued by the Railroad Commission of Texas, until further notice.

Effective December 1, 1891.

JOHN H. REAGAN, *Chairman.*
L. L. FOSTER,
W. P. McLEAN, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 45, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas at the City of Austin, this the 21st day of November, 1891.

J. J. ARTHUR, *Secretary,*

PART II.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, February 17, 1892.

Due and legal notice, as provided by the act of the Twenty-second Legislature of Texas, approved April 3, 1891, establishing a Railroad Commission for the State of Texas, and defining its duties, powers, etc., having been given by the Railroad Commission of Texas to each railroad company in said State, that said Commission would, on July 6, 1891, begin the work of classifying and fixing rates of transportation on all freight and property of every kind to be transported over railroads from point to point within said State, and that said work would be continued from day to day until finished, and the legally authorized agents and representatives of said railroad companies, in pursuance of said notice, having appeared before said Commission at its sessions, and had a full hearing upon said subjects, and said Commission having fully considered the subject of establishing rates on the commodities named in the subjoined Commodity Tariff No. 11, do fix and establish the rates therein set forth, which said rates shall go into effect on all railroads in the State of Texas, on shipments of *cement, plaster and plasterers' hair*, as therein described, from and to points within said State, on and after the 9th day of March, 1892, together with the regulations in relation thereto therein prescribed, and remain in force and effect until cancelled by the said Commission.

JOHN H. REAGAN, *Chairman*,
W. P. McLEAN,
L. L. FOSTER, *Commissioners*.

COMMODITY TARIFF NO. 11.

Issued by the Railroad Commission of Texas, to apply by continuous mileage on shipments of Cement and Plaster, in straight or mixed carloads, or mixed with Plasterers' Hair, as follows: Effective March 9, 1892—Between all points in Texas, east, west and north of, and including Houston.

Rates in Cents per 100 pounds. Minimum Weight 20,000 pounds.

DISTANCES.	RATES.	DISTANCES.	RATES.
10 miles and under	$0 08	150 miles and over 125.	$0 14 1-2
20 miles and over 10.....	09	175 miles and over 150.	15
30 miles and over 20.....	10	200 miles and over 175.	16
40 miles and over 30.....	11	250 miles and over 200.	17
50 miles and over 40.....	12	300 miles and over 250.	17 1-2
60 miles and over 50.....	12 1-2	350 miles and over 300.	18
80 miles and over 60.....	13	400 miles and over 350.	18
100 miles and over 80.....	13 1-2	450 miles and over 400.	19
125 miles and over 100....	14	Over 450 miles.	20

EXCEPTIONS.

The rates on shipments, transported 200 miles or more from or to stations on the following named lines of railroad, shall be ten (10) per cent. higher than rates set forth in the foregoing table for like distances:

International & Great Northern Railroad, west of San Antonio to Laredo, inclusive.

San Antonio & Aransas Pass Railway, north of San Antonio to Kerrville, inclusive.

San Antonio & Aransas Pass Railway, west of Skidmore to Alice, inclusive.

Texas Mexican Railway, all stations.

Gulf, Colorado & Santa Fe Railway, west of Brownwood to San Angelo, inclusive.

Texas & Pacific Railway, west of Abilene to El Paso, inclusive.

Galveston, Harrisburg & San Antonio Railway, west of San Antonio to Eagle Pass and El Paso, inclusive.

Fort Worth & Denver City Railway, Iowa Park to Texline, inclusive.

RATES FROM AND TO GALVESTON.

The rate between Galveston and Houston and intermediate stations shall be five (5) cents per 100 pounds.

The rates between Galveston and all other stations shall be five (5) cents per 100 pounds higher than the rates between Houston and the same stations.

EXCEPTIONS.

Existing rates from Galveston, as follows, shall remain in force:

To Beaumont and Orange, Cement, straight carloads, 15 cents per 100 pounds.

To Corpus Christi, Rockport and, Portland, Cement, straight car loads, 17 1-2 cents per 100 pounds.

To Corpus Christi, Rockport and Portland, Plaster, straight carloads, 20 cents per 100 pounds.

Two or more routes of railroads, extending from points of origin to destination, the lowest rates applicable, under this tariff, by any one of such routes, may be adopted by the other routes interested without affecting rates at intermediate points on said routes.

The following-named lines of railroad shall be exempt from the operation of this tariff, provided that the rates on shipments of the commodities named shall in no case exceed current Class D rates:

Brownsville & Gulf Railway.
Rio Grande & Eagle Pass Railway.
Paris, Marshall & Sabine Pass Railway.
Rio Grande & Eagle Pass Railway.
Rio Grande & El Paso Railway.
Weatherford, Mineral Wells & Northwestern Railway.
Texarkana & Fort Smith Railway.
Pecos Valley Railway.
Southern Kansas Railway.
Paris & Great Northern Railway.
Texas, Sabine Valley & Northwestern Railway.
De Kalb & Red River Railway.

I hereby certify that the above is a true and correct copy of Commodity Tariff No. 11, this day adopted by the Railway Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas at the city of Austin, this the 17th day of February, 1892.

J. J. ARTHUR, *Secretary*.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, February 22, 1892.

Due and legal notice, as provided by the act of the Twenty-second Legislature of Texas, approved April 3, 1891, establishing a Railroad Commission for the State of Texas and defining its duties, powers, etc., having been given by the Railroad Commission of Texas to each railroad company in said State, that said Commission would on July 6, 1891, begin the work of classifying and fixing rates of transportation on all freight and property of every kind to be transported over railroads from point to point within said State, and that said work would be con-

tinued from day to day until finished, and the legally authorized agents and representatives of said railroad companies, in pursuance of said notice, having appeared before said Commission at its sessions, and had a full hearing upon said subjects, and said Commission having fully considered the subject of establishing rates on the commodities named in the subjoined Commodity Tariff No. 12, do fix and establish the rates therein set forth which said rates shall go into effect on all railroads in the State of Texas on shipments of *lime* in straight car loads, and in mixed car loads, with *cement*, *plaster*, *plasterers' hair* from and to points within said State on and after the 14th day of March, 1892, together with the regulations in relation thereto therein prescribed, and remain in force and effect until cancelled by the said Commission.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

COMMODITY TARIFF NO. 12.

Issued by the Railroad Commission of Texas to apply by continuous mileage between all points in Texas on shipments of *lime* in car loads.

Rates in cents per 100 pounds. Minimum weight 20,000 pounds per car.

Distances.		Rates	Distances.		Rates
20 miles and under		7½	190 miles and over	180 miles	18
30 miles and over	20 miles	8	200 miles and over	190 miles	18½
40 miles and over	30 miles	8½	220 miles and over	200 miles	19
50 miles and over	40 miles	9	240 miles and over	220 miles	19½
60 miles and over	50 miles	10	260 miles and over	240 miles	20
70 miles and over	60 miles	11	280 miles and over	260 miles	20½
80 miles and over	70 miles	12	300 miles and over	280 miles	20½
90 miles and over	80 miles	13	325 miles and over	300 miles	21½
100 miles and over	90 miles	13½	350 miles and over	325 miles	22
110 miles and over	100 miles	14	375 miles and over	350 miles	23
120 miles and over	110 miles	14½	400 miles and over	375 miles	24
130 miles and over	120 miles	15	450 miles and over	400 miles	25
140 miles and over	130 miles	15½	500 miles and over	450 miles	26
150 miles and over	140 miles	16	550 miles and over	500 miles	27
160 miles and over	150 miles	16½	600 miles and over	550 miles	28
170 miles and over	160 miles	17	650 miles and over	600 miles	29
180 miles and over	170 miles	17½	Over 650 miles		30

CONDITIONS.

1st. The rates on shipments passing from point of origin to destination, over two or more lines of railroad not

under the same management and control for distances exceeding 100 miles, shall be ten (10) per cent higher than the rates set forth in foregoing table.

2nd. The rates on shipments passing from point of origin destination, over two or more lines of railroad not under the same management and control, for distances of 100 miles or less, shall be twenty (20) per cent. higher than the rates set forth in the foregoing table; provided, that any rate so made shall not exceed the rate made for 101 miles, in accordance with 1st paragraph hereof.

3rd. Two or more routes of railroad, extending from point of origin to destination, the lowest rates applicable under this tariff by any one of such routes may be adopted by the other routes interested without affecting rates from or to intermediate points on said routes.

EXCEPTIONS.

1st. The rates from Austin to Georgetown and intermediate stations shall not exceed 7½ cents per 100 pounds.

2nd. The rates from Austin, McNeil and Round Rock to San Antonio and intermediate stations on the International & Great Northern R. R. shall not exceed 10 cents per 100 pounds.

3rd. The rates from Austin, McNeil and Round Rock to Laredo and intermediate stations on the International & Great Northern R. R. shall not exceed 17½ cents per 100 pounds.

4th. The rates from Lime City, a station on the St. Louis Southwestern Ry., west of McGregor, to stations on the St. Louis Southwestern Ry., west of Mt. Pleasant to Sherman and Fort Worth, inclusive, shall not exceed 20 cents per 100 pounds.

5th. The rates from Lime City to Texarkana and intermediate stations on the St. Louis Southwestern Ry., and to Lufkin and intermediate stations on the Tyler Southeastern Ry., shall not exceed 15 cents per 100 pounds.

SPECIAL.

1st. Cement, plaster, and plasterers' hair in *mixed car loads* with lime, shall be subject to the rates prescribed in this tariff.

2nd. Shipments of lime destined to points on lines of gauge different from that of lines on which points of origin are situated, must be packed.

EXEMPTIONS.

The following named lines of railroad shall be exempt from the operation of this tariff; provided, that the rates on the commodities herein provided for, passing over said lines, shall in no case exceed current Class D rates: Brownsville & Gulf Ry.; Paris, Marshal & Sabine Pass Ry.; Rio Grande Ry.; Texarkana & Fort Smith Ry.; Southern Kansas Ry.; Texas, Sabine Valley & Northwestern Ry.; Rio Grande & Eagle Pass Ry.; Rio Grande & El Paso Ry.; Weatherford, Mineral Wells & Northwestern Ry.; Pecos Valley Ry.; Paris & Great Northern Ry.; De Kalb & Red River Ry.

I hereby certify that the above is a true and correct copy of Commodity Tariff No. 12, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 22nd day of February, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, March 15, 1892.

Due and legal notice, as provided by the act of the Twenty-second Legislature of Texas, approved April 3, 1891, establishing a Railroad Commission for the State of Texas and defining its duties, powers, etc., having been given by the Railroad Commission of Texas to each railroad company in said State, that said Commission would on July 6, 1891, begin the work of classifying and fixing rates of transportation on all freight and property of every kind, to be transported over railroads from point to point within said State, and that said work would be continued from day to day until finished, and the legally authorized agents and representatives of said railroad companies, in pursuance of said notice, having appeared before said Commission at its sessions and had a full hearing upon said subjects, and said Commission having fully considered the subject of establishing rates on the commodities named in the subjoined Commodity Tariff No. 13, do fix and establish the rates therein set forth, which said rates shall go into effect on all railroads in the State of Texas on shipments of *Live Stock* as described, from and to points within said State, on and after the 4th

day of April, 1892, together with the regulations in relation thereto therein prescribed, and remain in force and effect until canceled by the said Commission.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

COMMODITY TARIFF NO. 13.

Issued by Railroad Commission of Texas, naming rates for the transportation of *Live Stock*, as specified below, *in car loads* between stations in Texas.
Effective April 4, 1892.

TABLE OF RATES NO. 1.

To apply on shipments of Beef Cattle, Stock Cattle and Oxen transported from original point of shipment to destination over a single line of railroad, or over two or more lines of railroad under the same management and control.

RATES IN CENTS PER ONE HUNDRED POUNDS.

DISTANCES.	RATES.	DISTANCES.	RATES.
25 miles and under	5	250 miles and over 200	12½
50 miles and over 25	6¼	300 miles and over 250	14
75 miles and over 50	7½	350 miles and over 300	16¼
100 miles and over 75	8¾	400 miles and over 350	17½
125 miles and over 100	9	450 miles and over 400	18¾
150 miles and over 125	10	500 miles and over 450	20
175 miles and over 150	11	550 miles and over 500	22½
200 miles and over 175	11¼	Over 550 miles	25

TABLE OF RATES NO. 2.

To apply by continuous mileage on shipments of Beef Cattle, Stock Cattle and Oxen transported from original point of shipment to destination over two or more lines of railroad not under the same management and control.

RATES IN CENTS PER ONE HUNDRED POUNDS.

DISTANCES.	RATES	DISTANCES.	RATES.
25 miles and under	6	400 miles and over 350	20
50 miles and over 25	7½	450 miles and over 400	21½
75 miles and over 50	9	500 miles and over 450	23
100 miles and over 75	10½	550 miles and over 500	25
125 miles and over 100	11	600 miles and over 550	27½
150 miles and over 125	12	650 miles and over 600	29
175 miles and over 150	13½	675 miles and over 650	31
200 miles and over 175	15	700 miles and over 675	32
250 miles and over 200	16½	725 miles and over 700	33
300 miles and over 250	18	750 miles and over 725	34
350 miles and over 300	18½	Over 750 miles	35

HORSES AND MULES.

The rates on shipments of horses and mules in car loads shall be ten (10) per cent. higher than the rates set forth in the foregoing tables.

RULES AND REGULATIONS.

1st. The following minimum weights as assigned to standard gauge cars by lengths, internal measurement, shall govern, provided that cars exceeding 30½ feet in length shall be loaded to their full capacity:

Cars 30½ feet and under, 20,000 pounds.
Cars 32 feet and over 30½ feet, 20,800 pounds.
Cars 33 feet and over 32 feet, 21,400 pounds.
Cars 34 feet and over 33 feet, 22,000 pounds.
Cars 35 feet and over 34 feet, 22,500 pounds.
Cars 36 feet and over 35 feet, 23,000 pounds.
Cars 37 feet and over 36 feet, 23,500 pounds.
Cars over 37 feet, 24,000 pounds.

EXCEPTIONS TO FIRST RULE.

The minimum weights of carload shipments of yearlings (cattle over one and under two years of age), shall be twenty (20) per cent. less than those above specified.

NOTE.—This rule shall not be construed as imposing upon railroad companies the obligation to furnish cars of specified dimensions.

2nd. The minimum weight for narrow gauge cars shall be 15,000 pounds.

3rd. The rates and regulations of this tariff apply on shipments of livestock as described, when transported in ordinary livestock or stable cars. When in palace stock cars the shipments will be charged the customary rental of the companies owning such cars, in addition to the freight rates herein established. A stable car is one having two gates which divide its interior into three compartments, while palace stock cars have a separate compartment for each animal.

4th. Transportation of men in charge. Parties in charge of livestock subject to this tariff shipped by one

consignor to one consignee, shall be passed free as follows: With one or two cars, one man without return pass; with five cars and more than two cars, one man with return pass; with more than five cars, two men with return passes. It being understood that the return passes shall furnish transportation only to original point of shipment. Each railroad company shall use proper methods to secure the identification of parties entitled to free transportation under this rule.

5th. Two or more routes of railroad extending from point of origin to destination, the lowest rates applicable under this tariff by any one of such routes may be adopted by the other routes interested, without affecting rates at intermediate points on such routes.

EXCEPTIONS.

1st. The rates between Houston and Galveston and intermediate points, on shipments of live stock subject to this tariff, shall be five cents per 100 pounds.

2nd. The rate on beef cattle, stock cattle and oxen in car loads, from Mustang and Dukes, stations on Gulf, Colorado & Santa Fe Railway, to Houston and Galveston, shall be 5 cents per 100 pounds.

3rd. The rates on beef cattle, stock cattle and oxen in car loads, from stations on the Columbia Branch of the International & Great Northern railroad shall be, in cents per 100 pounds, to Houston five cents, and to Galveston and intermediate stations on the International & Great Northern railroad, south of Houston, six and one-quarter cents.

I hereby certify that the above is a true and correct copy of Commodity Tariff No. 13, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 15th day of March, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, March, 22, 1892.

Due and legal notice, as provided by the act of the

Twenty-second Legislature of Texas, approved April 3, 1891, establishing a Railroad Commission for the State of Texas, and defining its duties, powers, etc., having been given by the Railroad Commission of Texas to each railroad company in said State, that said Commission would, on July 6, 1891, begin the work of classifying and fixing rates of transportation on all freight and property of every kind to be transported over railroads from point to point within said State, and that said work would be continued from day to day until finished, and the legally authorized agents and representatives of said Railroad Companies, in pursuance of said notice, having appeared before said Commission at its sessions, and had a full hearing upon said subjects, and said Commission having fully considered the subject of establishing rates on the commodity named in the subjoined Commodity Tariff No. 14, do fix and establish the rates therein set forth, which said rates shall go into effect on all railroads in the State of Texas on shipments of *Wool* from and to points within said State on and after the 12th day of April, 1892, together with the regulations in relation thereto therein prescribed, and remain in force and effect until canceled by the said Commission.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

COMMODITY TARIFF NO. 14.

Issued by Railroad Commission of Texas, to apply on shipments of *Wool* between all points in Texas.
Effective April 12, 1892.

Table of Rates No. 1.

Rates in cents per 100 pounds, to apply on shipments of *Wool in sacks*, any quantity, between all stations in Texas, east, west and north of and including Houston, except as specially provided for. *Continuous mileage.*

Distances.	Rates.	Distances.	Rates.
25 miles and under..... ...	15	100 miles and over 95 miles	46
27 miles and over 25 miles	16	105 miles and over 100 miles	48
29 miles and over 27 miles	17	110 miles and over 105 miles	50
31 miles and over 29 miles	18	115 miles and over 110 miles	52
33 miles and over 31 miles	19	120 miles and over 115 miles	54
35 miles and over 33 miles	20	125 miles and over 120 miles	56
37 miles and over 35 miles	20½	130 miles and over 125 miles	58
39 miles and over 37 miles	21	135 miles and over 130 miles	60
41 miles and over 39 miles	21½	140 miles and over 135 miles	62
43 miles and over 41 miles	22	145 miles and over 140 miles	64
45 miles and over 43 miles	22½	150 miles and over 145 miles	66
47 miles and over 45 miles	23	155 miles and over 150 miles	68
49 miles and over 47 miles	23½	160 miles and over 155 miles	70
51 miles and over 49 miles	24	165 miles and over 160 miles	71
53 miles and over 51 miles	24½	170 miles and over 165 miles	72
55 miles and over 53 miles	25	175 miles and over 170 miles	73
57 miles and over 55 miles	26	180 miles and over 175 miles	74
59 miles and over 57 miles	27	185 miles and over 180 miles	75
61 miles and over 59 miles	28	190 miles and over 185 miles	76
63 miles and over 61 miles	29	195 miles and over 190 miles	77
65 miles and over 63 miles	30	200 miles and over 195 miles	78
67 miles and over 65 miles	31	250 miles and over 200 miles	79
69 miles and over 67 miles	32	300 miles and over 250 miles	80
71 miles and over 69 miles	33	350 miles and over 300 miles	81
73 miles and over 71 miles	34	400 miles and over 350 miles	82
75 miles and over 73 miles	35	450 miles and over 400 miles	83
77 miles and over 75 miles	36	500 miles and over 450 miles	84
79 miles and over 77 miles	37	550 miles and over 500 miles	85
81 miles and over 79 miles	38	600 miles and over 550 miles	86
85 miles and over 81 miles	40	650 miles and over 600 miles	87
90 miles and over 85 miles	42	700 miles and over 650 miles	88
95 miles and over 90 miles	44	Over 700 miles.....	90

RATES ON WOOL IN BANDED SACKS AND BALES, ANY QUANTITY.

1st. The rates on woolen sacks, two or more tied or banded together, so as to load 20,000 pounds in a box car 30 feet in length, shall be ten (10) cents per 100 pounds less than the rates set forth in the foregoing table.

2nd. The rates on wool pressed in bales, so as to load 20,000 pounds in a box car 30 feet in length, shall be fifteen (15) cents per 100 pounds less than the rates set forth in the foregoing table.

PROVIDED:

1st. That the rate on Wool in packages, as described in this section, for distances of 65 miles and less, shall be the same as the rates on Wool in sacks.

2nd. That he rates on Wool in packages, as described

in this section, for distances exceeding 65 miles, shall not be less than 30 cents per 100 pounds.

EXCEPTIONS.

The rates on Wool, from or to stations situated on lines of railroad, as described below, shall be ten (10) per cent. higher than the rates above prescribed.

Fort Worth & Denver City Railway—Stations north of Tascosa.

Southern Kansas Railway—All stations.

Texas & Pacific Railway—Stations west of Colorado City.

Galveston, Harrisburg & San Antonio Railway—Stations west and south of Spofford Junction.

International & Great Northern Railway—Stations south of Cotulla.

San Antonio & Aransas Pass Railway—Stations on Alice Branch south of Skidmore.

Texas Mexican Railway—Stations west of Alice.

RATES ON WOOL TO GALVESTON.

1st. The rate on Wool to Galveston from Houston and intermediate stations shall be ten (10) cents per 100 pounds.

2nd. The rates on Wool to Galveston from all other stations in Texas shall be ten (10) cents per 100 pounds higher than the rates from such points to Houston.

GENERAL EXCEPTION.

The rates on Wool shall in no case exceed the current First Class rates.

Table of Rates No. 2.

Rates, in cents per 100 pounds, to apply on shipments of Wool transported betewen stations in Texas for the purposes of marketing or concentration; provided that the stations at which such shipments are marketed or concentrated, shall be distant from Gulf Ports on the Texas coast one hundred miles or more of railroad mileage. *Continuous Mileage.*

Distances.	Rates.	Distances.	Rates.
25 miles and under.....	15	180 miles and over 170 miles	52
30 miles and over 25 miles	16	190 miles and over 180 miles	54
35 miles and over 30 miles	17	200 miles and over 190 miles	56
40 miles and over 35 miles	18	210 miles and over 200 miles	58
45 miles and over 40 miles	19	220 miles and over 210 miles	60
50 miles and over 45 miles	20	230 miles and over 220 miles	62
55 miles and over 50 miles	21	240 miles and over 230 miles	64
60 miles and over 55 miles	22	250 miles and over 240 miles	66
65 miles and over 60 miles	23	260 miles and over 250 miles	68
70 miles and over 65 miles	24	270 miles and over 260 miles	70
75 miles and over 70 miles	26	280 miles and over 270 miles	72
80 miles and over 75 miles	28	290 miles and over 280 miles	74
85 miles and over 80 miles	30	300 miles and over 290 miles	76
90 miles and over 85 miles	32	325 miles and over 300 miles	78
95 miles and over 90 miles	34	350 miles and over 325 miles	80
100 miles and over 95 miles	36	375 miles and over 350 miles	81
110 miles and over 100 miles	38	400 miles and over 375 miles	82
120 miles and over 110 miles	40	450 miles and over 400 miles	83
130 miles and over 120 miles	42	500 miles and over 450 miles	84
140 miles and over 130 miles	44	550 miles and over 500 miles	85
150 miles and over 140 miles	46	600 miles and over 550 miles	86
160 miles and over 150 miles	48	650 miles and over 600 miles	87
170 miles and over 160 miles	50	Over 650 mives.....	88

EXCEPTIONS.

The following existing rates shall remain in force:

TO BROWNWOOD.

From Norwood and Ballinger—20 cents per 100 pounds.

TO LAMPASAS.

From Zephyr and Ricker—20 cents per 100 pounds.

From Brownwood, San Angelo and intermediate points—25 cents per 100 pounds.

I hereby certify that the above is a true and correct copy of Commodity Tariff No. 14, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 22nd day of March 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, March, 25, 1892.

Due an dlegal notice, as provided by the act of the Twenty-second Legislature of Texas, approved April 3, 1891, establishing a Railroad Commission for the State of Texas, and defining its duties, powers, etc., having

been given by the Railroad Commission of Texas to each railroad company in said State, that said Commission would on July 6, 1891, begin the work of classifying and fixing rates of transportation on all freight and property of every kind to be transported over railroads from point to point within said State and that said work would be continued from day to day until finished, and the legally authorized agents and representatives of said railroad companies having appeared before said Commission at its sessions and had a full hearing upon said subjects, and said Commission having fully considered the subject of establishing rates on the commodities named in the subjoined Commodity Tariff No. 15, do fix and establish the rates therein set forth, which said rates shall go into effect on all railroads in the State of Texas on shipments of *Calves, Goats, Hogs and Sheep* in car loads, from and to points within said State on and after the 15th day of April, 1892, together with the regulations in relation thereto therein prescribed, and remain in force and effect until canceled by the said Commission.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

COMMODITY TARIFF NO. 15.

Issued by Railroad Commission of Texas, to apply by continuous mileage between all stations in Texas on shipments of calves, goats, hogs and sheep, in car loads.

Table of Rates, No. 1.

To apply on shipments of calves, goats, hogs and sheep, in car loads, transported from original point of shipment to destination, over a single line of railroad, or over two or more lines of railroad under the same management and control.

RATES IN CENTS PER ONE HUNDRED POUNDS.

DISTANCES.	RATES.	DISTANCES.	RATES.
25 miles and under	5	250 miles and over 200 miles	12½
50 miles and over 25 miles	6¼	300 miles and over 250 miles	14
75 miles and over 50 miles	7½	350 miles and over 300 miles	16¼
100 miles and over 75 miles	8¾	400 miles and over 350 miles	17½
125 miles and over 100 miles	9	450 miles and over 400 miles	18¾
150 miles and over 125 miles	10	500 miles and over 450 miles	20
175 miles and over 150 miles	11	550 miles and over 500 miles	22½
200 miles and over 175 miles	11¼	Over 550 miles	25

Table of Rates No. 2.

To apply on shipments of calves, goats, hogs and sheep transported from original point of shipment to destination over two or more lines of railroad not under the same management and control.

RATES IN CENTS PER ONE HUNDRED POUNDS.

DISTANCES.	RATES	DISTANCES.	RATES.
25 miles and under	6	400 miles and over 350 miles	20
50 miles and over 25 miles	7½	450 miles and over 400 miles	21½
75 miles and over 50 miles	9	500 miles and over 450 miles	23
100 miles and over 75 miles	10½	550 miles and over 500 miles	25
125 miles and over 100 miles	11	600 miles and over 550 miles	27½
150 miles and over 125 miles	12	650 miles and over 600 miles	29
175 miles and over 150 miles	13½	675 miles and over 650 miles	31
200 miles and over 175 miles	15	700 miles and over 675 miles	32
250 miles and over 200 miles	16½	725 miles and over 700 miles	33
300 miles and over 250 miles	18	750 miles and over 725 miles	34
350 miles and over 300 miles	18½	Over 750 miles	35

RULES AND REGULATIONS.

Subject to the provisions of the law of the State of Texas affecting the transportation of calves, goats, hogs and sheep in double deck cars. Art. 4227b, sections 1 and 2, Sayles' Texas Revised Statutes.

1st. The minimum weights of shipments, loaded in double deck cars of standard gauge, shall be as follows, provided that cars exceeding 30½ feet in length shall be loaded to their full capacity:

INTERNAL MEASUREMENTS.

Cars 30½ feet and under, 20,000 pounds.
Cars 32 feet and over 30½ feet, 20,800 pounds.
Cars 33 feet and over 32 feet, 21,400 pounds.
Cars 34 feet and over 33 feet, 22,000 pounds.
Cars 35 feet and over 34 feet, 22,500 pounds.
Cars 36 feet and over 35 feet, 23,000 pounds.
Cars 37 feet and over 36 feet, 23,500 pounds.
Cars over 37 feet, 24,000 pounds.

2d. The minimum weights of each shipment of calves, goats, hogs and sheep, sufficient in quantity to load only a single deck car of standard guage, shall be 15,000 pounds.

3d. The minimum weight of shipments in narrow

guage cars shall be as follows: In double deck cars, 20,000 pounds, and in single deck cars, 15,000 pounds.

TRANSPORTATION OF MEN IN CHARGE.

4th. Parties in charge of shipments of calves, goats hogs and sheep, in car loads, shall be passed free, as follows, provided that shipments exceeding two car loads shall be shipped by one consignor to one consignee:

With one or two cars, one man without return pass.

With five cars and over two cars, one man with return pass.

With more than five cars, two men with return passes.

NOTE.—Return passes shall afford transportation only to original point of shipment. Each railroad company shall use proper methods to secure the identification of parties entitled to free transportation under this rule.

EXCEPTIONS.

1st. The rate between Houston and Galveston and intermediate points, shall be five (5) cents per 100 pounds.

2d. The rate from Mustang, Arcola and Dukes, stations on the Gulf, Colorado and Santa Fe Railway, to Houston and Galveston, shall be five (5) cents per 100 pounds.

3d. The rates from stations on the Columbia Branch of the International and Great Northern Railroad shall be, in cents per 100 pounds, to Houston, five (5) cents, and to Galveston and intermediate stations on the International and Great Northern Railroad, south of Houston, six and a quarter (6¼) cents.

4th. The rates on shipments from Kansas City, and stations on the San Antonio and Aransas Pass Railway, south thereof, including those on the Alice Branch, to all stations on the San Antonio and Aransas Pass Railway, and to Galveston, shall be ten (10) per cent. higher than the rates herein prescribed.

I hereby certify that the above is a true and correct copy of Commodity tariff No. 15, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 25th day of March, 1892.

J. J. ARTHUR, *Secretary.*

Table of Rates No. 2.

To apply on shipments of calves, goats, hogs and sheep transported from original point of shipment to destination over two or more lines of railroad not under the same management and control.

RATES IN CENTS PER ONE HUNDRED POUNDS.

DISTANCES.	RATES	DISTANCES.	RATES.
25 miles and under	6	400 miles and over 350 miles	20
50 miles and over 25 miles	7½	450 miles and over 400 miles	21½
75 miles and over 50 miles	9	500 miles and over 450 miles	23
100 miles and over 75 miles	10½	550 miles and over 500 miles	25
125 miles and over 100 miles	11	600 miles and over 550 miles	27½
150 miles and over 125 miles	12	650 miles and over 600 miles	29
175 miles and over 150 miles	13½	675 miles and over 650 miles	31
200 miles and over 175 miles	15	700 miles and over 675 miles	32
250 miles and over 200 miles	16½	725 miles and over 700 miles	33
300 miles and over 250 miles	18	750 miles and over 725 miles	34
350 miles and over 300 miles	18½	Over 750 miles	35

RULES AND REGULATIONS.

Subject to the provisions of the law of the State of Texas affecting the transportation of calves, goats, hogs and sheep in double deck cars. Art. 4227b, sections 1 and 2, Sayles' Texas Revised Statutes.

1st. The minimum weights of shipments, loaded in double deck cars of standard gauge, shall be as follows, provided that cars exceeding 30½ feet in length shall be loaded to their full capacity:

INTERNAL MEASUREMENTS.

Cars 30½ feet and under, 20,000 pounds.
Cars 32 feet and over 30½ feet, 20,800 pounds.
Cars 33 feet and over 32 feet, 21,400 pounds.
Cars 34 feet and over 33 feet, 22,000 pounds.
Cars 35 feet and over 34 feet, 22,500 pounds.
Cars 36 feet and over 35 feet, 23,000 pounds.
Cars 37 feet and over 36 feet, 23,500 pounds.
Cars over 37 feet, 24,000 pounds.

2d. The minimum weights of each shipment of calves, goats, hogs and sheep, sufficient in quantity to load only a single deck car of standard guage, shall be 15,000 pounds.

3d. The minimum weight of shipments in narrow

guage cars shall be as follows: In double deck cars, 20,000 pounds, and in single deck cars, 15,000 pounds.

TRANSPORTATION OF MEN IN CHARGE.

4th. Parties in charge of shipments of calves, goats hogs and sheep, in car loads, shall be passed free, as follows, provided that shipments exceeding two car loads shall be shipped by one consignor to one consignee:

With one or two cars, one man without return pass.

With five cars and over two cars, one man with return pass.

With more than five cars, two men with return passes.

NOTE.—Return passes shall afford transportation only to original point of shipment. Each railroad company shall use proper methods to secure the identification of parties entitled to free transportation under this rule.

EXCEPTIONS.

1st. The rate between Houston and Galveston and intermediate points, shall be five (5) cents per 100 pounds.

2d. The rate from Mustang, Arcola and Dukes, stations on the Gulf, Colorado and Santa Fe Railway, to Houston and Galveston, shall be five (5) cents per 100 pounds.

3d. The rates from stations on the Columbia Branch of the International and Great Northern Railroad shall be, in cents per 100 pounds, to Houston, five (5) cents, and to Galveston and intermediate stations on the International and Great Northern Railroad, south of Houston, six and a quarter (6¼) cents.

4th. The rates on shipments from Kansas City, and stations on the San Antonio and Aransas Pass Railway, south thereof, including those on the Alice Branch, to all stations on the San Antonio and Aransas Pass Railway, and to Galveston, shall be ten (10) per cent. higher than the rates herein prescribed.

I hereby certify that the above is a true and correct copy of Commodity tariff No. 15, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 25th day of March, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, April 2, 1892.

Due and legal notice, as provided by the Act of the Twenty-second Legislature of Texas, approved April 3, 1891, establishing a Railroad Commission for the State of Texas, and defining its duties, powers, etc., having been given by the Railroad Commission of Texas to each railroad company in said State, that said Commission would, on July 6, 1891, begin the work of classifying and fixing rates of transportation on freight and property of every kind, to be transported over railroads from point to point within said State, and that said work would be continued from day to day until finished, and the legally authorized agents and representatives of said railroad companies, in pursuance of said notice, having appeared before said Commission at its sessions, and had a full hearing upon said subjects, and said Commission having fully considered the subject of establishing rates on the commodity named in the subjoined Commodity Tariff No. 16, do fix and establish the rates therein set forth, which said rates shall go into effect on all railroads in the State of Texas, on shipments of *Pig Iron* in car loads from and to points within said State, on and after the 23d day of April, 1892, together with the regulations in relation thereto therein prescribed, and remain in force and effect until canceled by the said Commission.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

COMMODITY TARIFF NO. 16.

Issued by Railroad Commission of Texas. Effective April 23, 1892.

Rates in cents per 100 pounds, to apply by continuous mileage on shipments of Pig Iron in car loads from Jefferson, Rusk and New Birmingham to all stations in Texas. Minimum weight 20,000 pounds per car.

Distances.		Rates.
20 miles and under		6
30 miles and over	20	6½
40 miles and over	30	7
50 miles and over	40	7½
60 miles and over	50	8
70 miles and over	60	8½
80 miles and over	70	9
90 miles and over	80	9½
100 miles and over	90	10
120 miles and over	100	11
140 miles and over	120	11½

Distances.		Rates.
160 miles and over	140	12
180 miles and over	160	12½
200 miles and over	180	13¾
250 miles and over	200	15
300 miles and over	250	16¼
350 miles and over	300	17½
400 miles and over	350	18¾
450 miles and over	400	20
500 miles and over	450	22½
Over 400 miles		25

EXCEPTIONS.

1st. The rates from Jefferson, Rusk and New Birmingham to stations on lines as described below, shall not exceed 12½ cents per 100 pounds.

International & Great Northern Railroad, Houston, Austin and stations north thereof.

Houston & Texas Central Railway, all stations.

Gulf, Colorado & Santa Fe Railway, Brenham, Gainesville and intermediate stations.

Gulf, Colorado & Santa Fe Railway, stations east of Somerville and east of Cleburne.

San Antonio & Aransas Pass Railway, stations north of Giddings.

Texas Central Railway, stations east of Morgan.

Missouri, Kansas & Texas Railway, stations north of Mineola and Elgin, except west of Gainesville.

St. Louis Southwestern Railway, stations east of McGregor, Hillsboro and Fort Worth.

Texas & Pacific Railway, stations east of Fort Worth and Whitesboro.

2nd. The rates from Jefferson, Rusk and New Birmingham to stations on lines as described below, shall not exceed 15 cents per 100 pounds.

International & Great Northern Railroad, Galveston and intermediate stations south of Houston.

Gulf, Colorado, & Santa Fe Railway, stations south of Brenham and Houston.

San Antonio & Aransas Pass Railway, stations west of Houston to Eagle Lake, inclusive.

San Antonio & Aransas Pass Railway, stations between Giddings and Flatonia.

San Antonio & Aransas Pass Railway, stations north of Luling.

Missouri, Kansas & Texas Railway, stations east of San Marcos and those south of Elgin.

Galveston, Harrisburg & San Antonio Railway, stations west of Houston to LaGrange and San Antonia, inclusive.

Texas & New Orleans Railway, stations east of Houston.

3rd. The rates from Jefferson to points on the following named lines shall not exceed the rates from Rusk, determined by mileage or otherwise.

Texas & Pacific Railway, stations west of Big Sandy.

Missouri, Kansas & Texas Railway, stations north of Mineola, Waxahachie and Alvarado.

Texas Central Railway, Garrett, Roberts and intermediate stations.

Houston & Texas Central Railway, stations on main line north of Garrett.

Gulf, Colorado & Santa Fe Railway, stations north, east and west of Cleburne.

Fort Worth & Rio Grande Railway, stations north of Dublin.

Fort Worth and Denver Railway, all stations.

4th. The Rio Grande Railroad shall be exempt from the operations of this tariff.

I hereby certify that the above is a true and correct copy of Commodity Tariff No. 16, this day adopted by the Railroad Commission of Texas.

Given under my hand and seal of the Railroad Commission of Texas, at the city of Austin, this the 2nd day of April, 1892.

J. J. ARTHUR, *Secretary*.

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 46.

Amending Commodity Tariff No. 9.

AUSTIN, TEXAS, November 23, 1891.

It is hereby ordered that Commodity Tariff No. 9, adopted by the Railroad Commission of Texas, October 16, 1891, and effective November 5, 1891, be amended as follows:

Rates on lignite, in car loads, from Lytle, a station on

the International & Great Northern Railroad, to San Antonio, effective December 3, 1891, 50 cents per ton of 2000 pounds.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 46, ameding Commodify Tariff No. 9, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 23d day of November, 1891.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 47.

Exempting the Hearne & Brazos Valley Railway Company from the Operation of All Commission Tariffs.

AUSTIN, TEXAS, November 27, 1891.

It is hereby ordered that, until further notice, the Hearne & Brazos Valley Railway Company be exempted from the operation of all tariffs issued and to be issued by the Railroad Commission of Texas.

Effective December 7, 1891.

JOHN H. REAGAN, *Chairman,*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 47, exempting the Hearne & Brazos Valley Railway Company from the operation of all Commission tariffs, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas at the city of Austin, this the 27th day of November, 1891.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 48.

Amending Commodity Tariff No. 10.

AUSTIN, TEXAS, November, 30, 1891.

It is hereby ordered that Commodity Tariff No. 10, adopted by the Railway Commission of Texas, October 26, 1891, and effective November 16, 1891, be amended by adding thereto the following *exception*, which shall become effective and be in force on and after December, 10, 1891:

Exception 14th.—The minimum weight, per car load, for *stone* and *sand* transported between points on the Weatherford, Mineral Wells and Northwestern Railway, and Weatherford, shall be 20,000.

JOHN H. REAGAN, *Chairman.*
W. P. MCLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 48, amending Commodity Tariff No. 10, this day adopted by the Railway Commission of Texas.

Given under my hand and the seal of the Railway Commission of Texas, at the city of Austin, this the 30th day of November, 1891.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 49.

Amended Circular No 3.

AUSTIN, TEXAS, December 7, 1891.

It is hereby ordered that Commodity Tariff No. 3, adopted by the Railroad Commission of Texas, September 1, 1891, and effective September 23, 1891, be amended by adding thereto the following exception, which shall become effective and be in force on and after December 14, 1891:

Exception 14th.—The rate of 11¼ cents per 100 pounds on Lumber to Tyler from all stations on the Houston, East and West Texas Railway, in force prior to the adop-

tion of Commodity Tariff No. 3, is hereby restored for application, except in cases where the mileage rates prescribed in said Commodity Tariff No. 3 are lower.

JOHN H. REAGAN, *Chairman,*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 49, amending Commodity Tariff No. 3, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 7th day of December, 1891.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 50.

Providing divisions of all rates between the Texas & Pacific Railway and the Paris, Marshall & Sabine Pass Railway, on all shipments under Commodity Tariff No. 3, and amendments thereto.

AUSTIN, TEXAS, December 7, 1891.

The Texas & Pacific and the Paris, Marshall & Sabine Pass Railway Companies having failed to agree upon a division of freight charges arising from the transportation of commodities included in Commodity Tariff No. 3, and the amendments thereto, established by this Commission over said two roads, and the subject of said division having come before the Commission for adjustment, as provided in subdivision (f), section (3) of the Commission law, the following shall be the respective shares of said roads on all freight charges arising from the joint transportation of said commodities over said two roads from this date:

1st. On all shipments destined to any point on the Texas & Pacific Railway, the Paris, Marshall & Sabine Pass Railway shall receive as its proportion of charges on said shipments four (4) cents per one hundred pounds.

2nd. On all shipments passing over said Texas & Pacific Railway, and destined to any point on a connecting line with said road, the Paris, Marshall & Sabine Pass Rail-

way shall receive as its proportion of freight charges on said shipments three and one-half (3½) cents per one hundred pounds.

JOHN H. REAGAN, *Chairman*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 50, providing for divisions of rates between the Texas & Pacific Railway and the Paris, Marshall & Sabine Pass Railway on all shipments under Commodity Tariff No. 3, and amendments thereto, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this 7th day of December, 1891.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 51.

Amending Commodity Tariff No. 6.

AUSTIN, TEXAS, December 9, 1891.

It is hereby ordered that Commodity Tariff No. 6, adopted by the Railroad Commission of Texas, September 21, 1891, and effective October 12, 1891, be amended as follows:

RATES ON COTTON IN BALES, UNCOMPRESSED.

From stations on the New York, Texas & Mexican Railway, named below, to *Houston* and *Galveston.*

Effective December 29, 1891.

Rates in cents per 100:

	To Houston.	To Galveston
From Kendleton	12 cents	19 cents
From Hungerford	17 "	24 "
From Wharton	20 "	27 "

JOHN H. REAGAN, *Chairman,*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 51, amending Commodity Tariff No.

6, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 9th day of December, 1891.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 52.

Amending Commodity Tariff No. 3.

AUSTIN, TEXAS, December 17, 1891.

It is hereby ordered that Commodity Tariff No. 3, adopted by the Railroad Commission of Texas, September 1, 1891, and effective September 23, 1891, be amended by adding thereto the following exception, which shall become effective and be in force on and after December 28, 1891.

15TH EXCEPTION.

The following rates on Fence Posts, in car loads from Kerrville and Boerne to stations on the San Antanio & Aransas Pass Railway, as specified below, are hereby established-

In Dollars and Cents per car load of 30,000 pounds. Excess at proportionate rates.		
TO	From Kerrville	From Boerne.
San Antonio	$15 00	$12 50
Stations south of San Antonio to Kenedy, inclusive	22 50	20 00
Stations south of Kenedy to Skidmore, inclusive; south of Skidmore to Corpus Christi and Rockport; east of Kenedy to Eagle Lake; north of Yoakum to Winchester and Luling, inclusive	25 00	22 50
Lockhart, Giddings and Lexington	30 00	27 50
Station north of Lexington to Waco, inclusive	32 50	30 00
Stations on Alice Branch, Mathis to Alice, inclusive	32 00	29 50

JOHN H. REAGAN, *Chairman.*
W. P. MCLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 52, amending Commodity Tariff No. 3, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 17th day of December, 1891.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 53.

Amending Commodity Tariff No. 1.

AUSTIN, TEXAS, December 18, 1891.

It is hereby ordered that Commodity Tariff No. 1, adopted by the Railroad Commission of Texas, August 13, 1891, and effective September 9, 1891, be amended by adding thereto the following rule, which shall become effective and be in force on and after January 9, 1892:

Mixed shipments of *hay* and *grain* in car loads, minimum weight 20,000 pounds, shall take the *car load* rates prescribed in Commodity Tariff No. 1 for hay and the different classes of grain therein specified.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 53, amending Commodity Tariff No. 1, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 18th day of December, 1891.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 54.

Authorizing the Adoption of Western Classification No. 13.

AUSTIN TEXAS, December, 21, 1891.

Authority is hereby granted for the adoption and application of *Western Classification No. 13*, on shipments of freight passing between points in the State of Texas,

except where its ratings may be in conflict with the law of the State, viz.:

Article 4257, Revised Statutes; with the tariffs and rulings of this Commission, or with the existing Exception to Western Classification.

JOHN H. REAGAN, *Chairman.*
L. L. FOSTER,
W. P. McLEAN, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 54, authorizing the adoption of Western Classification No 13, this day adopted by the Railroad Commission of Texas.

Given under my hand, and the seal of the Rail road Commission of Texas, at the city of Austin, this the 21st day of December, 1891.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 55.

Amending Commodity Tariff No. 4.
Providing for Minimum Weight per Carload on Narrow Gauge Railroads of Commodities Named in that Tariff.

AUSTIN, TEXAS, January 4, 1892.

It is hereby ordered that Commodity Tariff No. 4 adopted by this Commission September 12, 1891, and effective October 5, 1891, be amended by adding the following provision, viz.:

The minimum weight per carload of Commodities named in this Tariff (No. 4) shall be, on narrow gauge railroads, sixteen thousand pounds.

This amendment effective January 24, 1892.

JOHN H. REAGAN, *Chairman,*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 55, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 4th day of January, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 56.

Amending Commodity Tariff No. 8.

AUSTIN, TEXAS, January 15, 1892.

It is hereby ordered that Commodity Tariff No. 8, adopted by the Railroad Commission of Texas, October 10, 1891, and effective October 30, 1891, be amended by adding thereto the following exception, which shall become effective and be in force on and after January 25, 1892.

THIRD EXCEPTION.

The rates on the commodities, as specified in Commodity Tariff No. 8, to and from points on the Houston, East & West Texas Railway may, without exception, be ten (10) per cent. higher than the rates set forth in said Commodity Tariff No. 8.

PROVIDED.

First—That rates on the same commodities transported between stations on the Houston, East & West Texas Railway and points on lines of railroad connecting with that line, may all be made by first determining, as prescribed above, the local rates for the mileage of the Houston, East & West Texas Railway, over which such shipments are to be transported; then adding to them the local rates for the mileage of the connecting lines composing the routes for said shipments, and finally deducting twenty (20) per cent. from the total thus formed.

Second—That the rights established by rule No. 3, under the heading of "Conditions" of Commodity Tariff No. 8, shall not be hereby abridged.

Third—That the rates between Galveston and stations on the Houston, East & West Texas Railway on the commodities provided for in Second Exception of Commodity Tariff No. 8, shall be made by adding 7½ cents per 100 pounds to the full local rates of the Houston, East & West Texas Railway, except in cases where the rates made in accordance with the first provision hereof, the

rates for the actual mileage north and south of Houston being considered, may be less.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 56, amending Commodity Tariff No. 8, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 15th day of January, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR NO. 57.

Providing Divisions of Rates between the Rio Grande and Eagle Pass Railway, and the International and Great Northern Railroad, on Shipments of Coal under Commodity Tariff No. 9, and amendments thereto.

AUSTIN, TEXAS, January 22, 1892.

The Rio Grande and Eagle Pass Railway, and the International and Great Northern Railroad companies, having failed to agree upon a division of freight charges arising from the transportation of Coal in car loads, as prescribed in Commodity Tariff No. 9, and amendments thereto, established by this Commission over said two roads, and the subject of said division having come before this Commission for adjustment, as prescribed in subdivision (f), of the Commission law, the following shall be the respective shares of said roads on shipments of Coal in carloads from Santa Thomas mines to San Antonio and Austin over the said roads from this date:

1st. On Coal, in car loads, from Santa Thomas to San Antonio:

Through rate, per ton of 2000 pounds	$1 70
Rio Grande and Eagle Pass Railway proportion	66
International and Great Northern R. R. proportion	1 04

2nd. On Coal, in car loads, from Santa Thomas to Austin:

Through rate, per ton of 2000 pounds.....$2 50
Rio Grande and Eagle Pass Railway proportion..... 70
International and Great Northern R. R. proportion..... 1 80

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 57, providing provisions of rates between the Rio Grande and Eagle Pass Railway, and the International and Great Northern Railroad companies, on shipments of Coal under Commodity Tariff No. 9, and amendments thereto, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 22d day of January, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS,

CIRCULAR No. 58.

Amending Commodity Tariff No. 10.

AUSTIN, TEXAS, February 6, 1892.

It is hereby ordered that Commodity Tariff No. 10, adopted by the Railroad Commission of Texas, October 26, 1891, and effective November 16, 1891, be amended as follows:

Under the heading of *Rates on common Brick*, on page 2, change the two first entries to read as follows:

6 miles and under .....rate 62½
10 miles and over 6 miles .....rate 80

Cancel *10th exception*, which is contained in Circular No. 36, and reads as follows: "The rate on *brick* from Calaveras, on th San Antonio & Aransas Pass Railway, to San Antonio shall be $1 per 1000 brick."

This order shall become effective and remain in force on and after February 27, 1892.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 58, amending Commodity Tariff No. 10, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas at the city of Austin, this the 6th day of February, 1891.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR NO. 60.

Amending Commodity Tariff No. 10.

AUSTIN, TEXAS, February 15, 1892.

It is hereby ordered that Commodity Tariff No. 10, adopted by the Railroad Commission of Texas, October 26, 1891, and effective November 16, 1891, be amended by adding thereto Exception No. 15, which shall become effective and be in force on and after February 23, 1892, as follows:

Exception No. 15.—The rates on *stone*, car loads, to be used only in construction of jetties at Galveston from quarries situated on the San Antonio & Aransas Pass Railway, between West Point and Wallis, shall be follows:

To Wallis.....70 cents per ton of 2000 pounds.
To Houston.....75 cents per ton of 2000 pounds.
Minimum car loads 20 tons.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 60, amending Commodity Tariff No. 10, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 15th day of February, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 61.

Authorizing the Adoption of Classification Rulings.

AUSTIN, TEXAS, February 22, 1892.

Authority is hereby granted for the adoption and application of classification rulings supplemental to Western classification No. 13, dated at Chicago, February 15, 1892, on shipments of freight passing between points in Texas, subject to conditions named in Circular No. 54, issued by this Commission on December 21, 1891.

Effective March 1, 1892.

JOHN H. REAGAN, *Chairman.*
L. L. FOSTER,
W. P. McLEAN, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 61, authorizing the adoption of Classification Rulings dated at Chicago, February 15, 1892, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas at the City of Austin, this the 22d day of February, 1892.

J. J. ARTHUR, *Secretary,*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 62.

Authorizing the Establishment of Rates of Freight from and to Stations on the Velasco Terminal Railway.

AUSTIN, TEXAS, February 24, 1892.

Authority is hereby granted for the adoption and application of the local rates of freight between stations on the Velasco Terminal Railway, the joint rates of freight between stations on the Velasco Terminal Railway and those named on the International & Great Northern Railroad, and the basis for making joint rates of freight between points on the Velasco Terminal Railway and all other points in Texas, as specified below:

FREIGHT TARIFF.

International & Great Northern Railroad, No. 64.
Velasco Terminal Railway, No. 1.
Effective February 24, 1892.

Applying on *merchandise*, by classes, between Velasco and stations on the Velasco Terminal Railway and between Velasco and Houston, Galveston and East Columbia, and on cotton from Houston to Velasco, via Chenango Junction, subject to current classification authorized by the Railroad Commission of Texas:

BETWEEN VELASCO AND	RATE IN CENTS PER 100 POUNDS. CLASSES.										
	1st	2d	3d	4th	5th	A.	B.	C.	D.	E.
Chenango Junction and intermediate stations on Velasco Terminal Railway	20	20	20	20	15	15	15	13	11	8
East Columbia & Houston	20	20	20	20	15	15	15	13	11	8
Galveston	25	25	25	25	20	20	20	16	15	12

The above rates between Velasco and East Columbia, Houston and Galveston, will not apply between Velasco and intermediate points not specified.

COTTON.

Rate on cotton from Houston to Velasco, 7 cents per 100 pounds.

FREIGHT TARIFF.

International & Great Northern Railroad No. 65.
Velasco Terminal Railway No. 2.
Effective February 24, 1892.

Applying on *merchandise*, by classes, between stations on the *Velasco Terminal Railway*, and stations on the *International & Great Northern R. R.*, as specified below. Subject to current classification as authorized by the Railroad Commission of Texas.

Between stations on the Velasco Terminal Railway, south of Chenango Junction (except as provided for in foot note below). And	RATES IN CENTS PER 100 POUNDS CLASSES.									
	1st	2d	3d	4th	5th	A	B	C	D	E
Houston, East Columbia and intermediate stations on the I. & G. N. R. R	40	35	30	26	24	25	23	20	18	12
Galveston and intermediate stations on the I. & G. N. R. R., south of Houston	50	45	40	31	29	30	28	25	23	18

NOTE.—For rates between Velasco proper and East Columbia, Houston and Galveston, see freight tariff above, designated as I. & G. N. R. R., No. 64—V. T. Ry., No. 1.

BASES FOR JOINT RATES,

Effective February 24, 1892.

No. 1. To make rates between Velasco and points in Texas, not provided for in the foregoing tariffs, add the rates set forth in Velasco Terminal Railway Tariff No. 1 (I & G. N. R. R. No. 64), above, as applying between Houston and Velasco, to the local rates from and to Houston until the following through class rates are reached: 1st class, *98;* 2d class, *90;* 3d class, *77;* 4th class *70;* 5th class, *54;* class A, *58;* class B, *51;* class C, *41;* class D, *30;* class E, *23*.

No. 2. To make rates between stations on the Velasco Terminal Railway, south of Chenango Junction, except Velasco and points in Texas not otherwise provided for, add the rates set forth in Velasco Terminal Railway Tariff No. 2 (I. & G. N. R. R., No., 65), above, as applying between Houston and stations on Velasco Terminal Railway, north of Velasco, to the local rates from and to Houston until the through class rates named in Basis No. 1 are reached.

No. 3. *Exception to Basis Nos. 1 and 2.* Current class rates between Galveston and all points in Texas, which exceed the through class rates named in Basis No. 1, shall apply between all stations on the Velasco Terminal Railway, and the same points.

No. 4. The rates on *cotton* from all points in Texas, except those on the Columbia Branch of the International and Great Northern R. R. to Velasco, shall be made by adding seven (7) cents per 100 pounds to the rates applying on the same commodity from such points to Houston.

JOHN H. REAGAN, *Chairman,*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 62, authorizing the establishment of rates of freight from and to stations on the Velasco Terminal Railway, this day enacted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 24th day of February, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF THE
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 63.

Amending Commodity Tariff No. 1.

AUSTIN, TEXAS, February 24, 1892.

It is hereby ordered that Commodity Tariff No. 1, adopted by the Railroad Commission of Texas, August 13, 1891, and effective September 9, 1891, be amended as follows:

The rates on wheat, corn, rye, barley, oats, bran, mill-feed, and millstuff, in straight or mixed car loads, or mixed with hay, minimum weight 20,000 pounds per car, and on hay in straight car loads, minimum weight 17,000 pounds per car, between stations in Texas, except those on the Galveston, Harrisburg & San Antonio Railway, west of Spofford Junction to Eagle Pass and El Paso, inclusive, and on the Texas & Pacific Railway, west of Colorado City, to and including El Paso, shall not exceed 22½ cents per 100 pounds.

This order shall take effect, and be in force on and after March 16, 1892.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 63, amending Commodity Tariff No. 1, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas in the city of Austin, this the 24th day of February, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS,

CIRCULAR No. 64.

Amending Commodity Tariff No. 12.

AUSTIN, TEXAS, Febuary 24, 1892.

It is hereby ordered that rule No. 2, under the head of "Special," in Commodity Tariff No. 12, which was adopted by the Railroad Commission of Texas February 22, 1892, and made effective March 14, 1892, be cancelled and the following substituted therefor:

Shipments of lime, not packed, destined to stations on lines of gauge different from that of lines on which points of origin are situated, will be subject to a charge not exceeding $2.50 per car, in addition to the freight rates prescribed in Commodity Tariff No. 12, to defray the expense of transfer from original cars to those of different guage. Effective March 16, 1892.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 64, amending Commodity Tariff No. 12, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission, at the city of Austin, this the 24th day of February, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS,

CIRCULAR No. 65.

Amending Commodity Tariff No. 12.

AUSTIN, TEXAS, February 25, 1892.

It is hereby ordered that Commodity Tariff No. 12, adopted by the Railroad Commission of Texas, February 22, and effective March 14, 1892, be amended as follows:

Change Rule No. 1, under the heading of "Special," to read thus: Cement, Plaster and Plasterers' Hair in mixed car loads with Lime shall be subject to the rates prescribed in this tariff (Commodity Tariff No. 12), provided that

the rates on such mixed shipments shall in no case be less than the rates on Cement in straignt car loads.

Effective March 14, 1892.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 65, amending Commodity Tariff No. 12, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 25th day of February, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF THE
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 66.

Authorizing the Adoption of Classification Rulings.

Austin, Texas, February 29, 1892.

Authority is hereby given for the adoption and application of Classification Rulings supplemental to Western Classification No. 13, dated at Chicago, February 23, 1892, on shipments of freight passing between points on railroads in Texas, subject to conditions named in Circular No. 54, issued by this Commission on December 21, 1891.

Effective March 7, 1893.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 66, authorizing the adoption of Classification Rulings dated at Chicago, February 23, 1892, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 29th day of February, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 67.

Amending Commodity Tariff No. 3.

AUSTIN, TEXAS, February 29, 1892.

It is hereby ordered that Commodity Tariff No. 3, adopted by the Railroad Commission of Texas, September 1, 1891, and effective September 23, 1891, be amended as follows:

The rate on *Lumber, Lath, Shingles, Fence Posts* and *Piling*, in car loads, minimum weight 24,000 pounds, from stations on the Houston, East & West Texas Railway to Velasco, Texas, shall be 10½ cents per 100 pounds.

Effective March 7, 1892.

JOHN H. REAGAN, *Chairman,*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 67, amending Commodity Tariff No. 3, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 29th day of February, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 68.

Amending Commodity Tariff No. 10.

AUSTIN, TEXAS, March 2, 1892.

It is hereby ordered that Commodity Tariff No. 10, adopted by the Railroad Commission of Texas October 26, 1891, and effective November 16, 1891, be amended by adding thereto the following exception, which shall take effect and be in force on and after March 10, 1892:

Exception 16—The rate on *Stone* from Brackenridge, a station on the San Antonio and Aransas Pass Railway, to Aransas Harbor, to be used only in harbor improvements, shall be $10.50 per car load of twenty tons.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 68, amending Commodity Tariff No. 10, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 2d day of March, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 69.

Amending Commodity Tariff No. 9.

AUSTIN, TEXAS, March 2, 1892.

It is hereby ordered that Commodity Tariff No. 9, adopted by the Railroad Commission of Texas October 16, 1891, and effective November 5, 1891, be amended as follows:

The rate on wood from Clute, a station on the Velasco Terminal Railway, to Velasco, shall be 50 cents per cord for car loads of eight cords or more.

Effective March 10, 1892.

JOHN H. REAGAN, *Chairman,*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 69, amending Commodity Tariff No. 9, this day adopted by the Railroad Commissioners of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 2d day of March, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 70.

Amending Commodity Tariff No. 3.

AUSTIN, TEXAS, March 2, 1892.

It is hereby ordered that Commodity Tariff No. 3, adopted by the Railroad Commission of Texas Septem-

ber 1, 1891, and effective September 23, 1891, be amended as follows:

Change—Change the minimum weight of shipments from stations on the Houston, East & West Texas Railway to Velasco, as specified in Circular No. 67, issued by this Commission February 29, 1892, from 24,000 pounds to 20,000 pounds.

Effective March 7, 1892.

Addition—The rate on *lumber, lath, shingles, fence posts* and *piling*, in car loads, from Beaumont and Orange to Velasco, shall be 10½ cents per 100 pounds.

Effective March 11, 1892.

JOHN H. REAGAN, *Chairman*,
W. P. McLEAN,
L. L. FOSTER, *Commissioners*.

I hereby certify that the above is a true and correct copy of Circular No. 70, amending Commodity Tariff No. 3, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 2d day of March, 1892.

J. J. ARTHUR, *Secretary*.

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 71.

Amending Commodity Tariff No. 8.

AUSTIN, TEXAS, March 2, 1892.

It is hereby ordered that Commodity Tariff No. 8, adopted by the Railroad Commission of Texas October 10, 1891, and effective October 30, 1891, be amended by adding *Castor Beans*, in quantities less than car load, to the list of commodities subject to *Grain Rates*, as set forth in Commodity Tariff No. 8.

Effective March 23, 1892.

JOHN H. REAGAN, *Chairman*.
W. P. McLEAN,
L. L. FOSTER, *Commissioners*.

I hereby certify that the above is a true and correct copy of Circular No. 71, amending Commodity Tariff No.

8, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 2nd day of March, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS,

CIRCULAR No. 72.

Establishing bases for making certain rates of freight from and to stations on the Fort Worth & Rio Grande Railway.

AUSTIN, TEXAS, March 3, 1892.

It is hereby ordered that the rates from and to stations on the Fort Worth & Rio Grande Railway, on all commodities subject to the commodity tariffs established by this Commission, be made subject to the following conditions and exceptions:

FIRST.

The rules and conditions contained in Commodity Tariff No. 1, and amendment thereto, established by this Commission, according to certain lines of railroad the privilege of increasing their rates ten (10) per cent. on the commodities named in said Commodity Tariff No. 1, and amendments, shall apply on shipments of the same commodities passing over the Fort Worth & Rio Grande Railway.

SECOND.

(*a*) The rates on shipments of Commodities named in Commodity Tariff No. 8, and amendments thereto, passing locally between stations on the Fort Worth & Rio Grande Railway shall be ten (10) per cent. higher than the rates set forth in said Commodity Tariff No. 8, and the amendments thereto.

(*b*) The rates on like shipments passing between stations on the Fort Worth & Rio Grande Railway, and those on other lines of railroad in Texas, shall be made by first determining the local rates of the Fort Worth & Rio Grande Railway in accordance with section (*a*) of this rule, then adding the rates so fixed to the local rates of the lines extending from points of interchange with the Fort Worth & Rio Grande Railway to the points of

origin or destination on such lines, and finally deducting twenty (20) per cent. from the sum thus obtained.

THIRD.

(*a*) The rates on shipments of commodities subject to all other commodity tariffs established by this Commission, which pass locally between stations on the Fort Worth & Rio Grande Railway, shall be ten (10) per cent. higher than the rates set forth in such commodity tariffs.

(*b*) The rates on like shipments passing between stations on the Fort Worth & Rio Grande Railway, and those on other lines of railroad in Texas, shall be made by first determining the rates for the distances between points of origin and destination, as prescribed in the said commodity tariffs, and then adding thereto ten (10) per cent. of the rates for the mileage of the Fort Worth & Rio Grande Railway, employed in determining the through mileage rates; provided, that such increase of ten (10) per cent. shall invariably accrue to the Fort Worth & Rio Grande Railway.

FOURTH.

The rights and privileges of the Fort Worth & Rio Grande Railway, as established by the rule contained in Circular No. 13, issued by this Commission, October 1, 1891, shall not be abridged by the foregoing rules; but it shall be the duty of the said Fort Worth & Rio Grande Railway to file with this Commission and publish a list of the rates to be maintained under such rights and privileges.

This order shall take effect and be in force on and after March 23, 1892.

JOHN H. REAGAN, *Chairman*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 72, establishing basis for making certain rates of freight from and to stations on the Fort Worth & Rio Grande Railway, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas at the city of Austin, this the 3rd day of March, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 73.

Amending Commodity Tariff No. 10.

AUSTIN, TEXAS, March 7, 1892.

It is hereby ordered that Commodity Tariff No. 10, adopted by the Railroad Commission of Texas, October 26, 1891, and effective November 16, 1891, be amended by adding thereto the 17th exception, as follows.

17TH EXCEPTION.

The rate to Galveston from Clay and intermediate stations on the Gulf, Colorado & Santa Fe Railway, on Stone to be used in wharf improvements and in works for protection of Galveston Island property against erosion, shall be seven (7) cents per 100 pounds, except in cases where the mileage rates set forth in this Tariff (Commodity Tariff No. 10), may be less.

This order shall take effect and be in force on and after March 17, 1892, without affecting the rates from or to stations on the Gulf, Colorado & Santa Fe Railway other than those as designated above.

JOHN H. REAGAN, *Chairman.*
L. L. FOSTER,
W. P. McLEAN, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 73, amending Commodity Tariff No. 10, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 7th day of March, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 74.

Authorizing the Adoption of Classification Rulings.

AUSTIN, TEXAS, March 7, 1892.

Authority is hereby granted for the adoption and application of Classification Rulings, supplemental to West-

ern Classification No. 13, dated at Chicago, February 29, 1892, on shipments of freight passing between points in Texas, subject to conditions named in Circular No. 54, issued by this Commission on December 21, 1891.
Effective March 17, 1892.

JOHN H. REAGAN, *Chairman.*
L. L. FOSTER,
W. P. McLEAN, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 74, authorizing the adoption of Classification Rulings dated at Chicago, February 29, 1892, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas at the City of Austin, this the 7th day of March, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 75.

Amending Commodity Tariff No. 3.

AUSTIN, TEXAS, March 8, 1892.

It is hereby ordered that Commodity Tariff No. 3, adopted by the Railroad Commission of Texas September 1, 1891, and effective September 23, 1891, be amended as follows:

Effective March 15, 1892.

The rate on *lumber, lath, shingles, fence posts* and *piling* in car loads, minimum weight 24,000 pounds, from stations on the Trinity and Sabine Branch of the Missouri, Kansas & Texas Railway, and intermediate stations on the International & Great Northern Railroad to Velasco, Texas, shall be 10½ cents per 100 pounds, *except* in cases where the mileage rates set forth in the above named tariff are less.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 75, amending Commodity Tariff No. 3, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 8th day of March, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR NO. 76.

Amending Commodity Tariff No. 10.

AUSTIN, TEXAS, March 11, 1892.

It is hereby ordered that Commodity Tariff No 10, adopted by the Railroad Commission of Texas October, 26, 1891, and effective November 16, 1891, be amended by adding thereto the following exceptions, which shall take effect and be in force on and after March 15, 1892:

18TH EXCEPTION.

The rate on *Stone* in car loads from Muldoon, a station on the San Antonio & Aransas Pass Railway, to Galveston, to be used in improvements other than jetty work, shall be $1.50 per ton of 2000 pounds.

JOHN H. REAGAN, *Chairman,*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 76, amending Commodity Tariff No. 10, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 11th day of March, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 77.

Amending Commodity Tariff No. 8.

AUSTIN, TEXAS, March 12, 1892.

It is hereby ordered that Commodity Tariff No. 8, adopted by the Railroad Commission of Texas, October 10, 1891, and effective October 30, 1891, be amended by

adding thereto the following exception, which shall take effect and be in force on and after March 17, 1892:

4TH EXCEPTION.

The following rates shall apply on commodities, less than carloads, as named in Commodity Tariff No. 8, and amendments thereto:

Rates in Cents per 100 pounds	Rates
Between Houston and Velasco proper	20
Between Galveston and Velasco proper	25

JOHN H. REAGAN, *Chairman,*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 77, amending Commodity Tariff No. 8, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas at the city of Austin, this the 12th day of March, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 78.

Authorizing the Adoption of Classification Rulings.

AUSTIN TEXAS, March, 12, 1892.

Authority is hereby granted for the adoption and application of Classification Rulings, supplemental to Western Classification No 13, dated at Chicago, February 8, 1892, authorizing Western Classification Rulings Nos. 69 to 79, inclusive, on shipments of freight passing between points in Texas, subject to conditions named in Circular No. 54, issued by this Commission on December 21, 1891.

Effective March 22, 1892.

JOHN H. REAGAN, *Chairman,*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 78, authorizing the adoption of Classification Rulings, dated at Chicago, February 8,

1892, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 12th day of March, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 79.

AUSTIN, TEXAS, March 12, 1892.

It is hereby ordered that Commodity Tariff No. 3, adopted by the Railroad Commission of Texas September 1, 1891, and effective September 23, 1891, be amended as follows:

Effective March 13, 1892.

The rates on commodities, carloads, as named in Commodity Tariff No. 3, to Velasco proper from stations on the International and Great Northern Railroad, shall be:

From stations north of Houston to Phelps, inclusive, 8¾ cents per 100 pounds.

From stations north of Phelps 10½ cents per 100 pounds.

This order will cancel rates from stations on the International and Great Northern Railroad, as established by Circular No. 75, issued by this Commission March 8, 1892.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 79, amending Commodity Tariff No. 3, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, this the 12th day of March, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR NO. 80.

Amending Commodity Tariff No. 1.

AUSTIN, TEXAS, March 12, 1892.

It is heredy ordered that Commodity Tariff No. 1,

adopted by the Railroad Commission of Texas August 13, 1891, and effective September 9, 1891, be amended as follows:

Commodities, in carloads, as named in Commodity Tariff No. 1, when shipped to or from Velasco proper, shall not be subject to the increase of ten (10) per cent. in rates, as authorized in behalf of the Columbia Branch of the International and Great Northern Railroad.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 80, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, this the 12th day of March, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS,

CIRCULAR No. 81.

Amending Commodity Tariff No. 3.

AUSTIN, TEXAS, March 15, 1892.

It is hereby ordered that Commodity Tariff No. 3, adopted by the Railroad Commission of Texas September 1, 1891, and effective September 23, 1891, be amended as follows:

Effective March 25, 1892.

The rate on *pine piling, carloads*, minimum weight 24,000 pounds, from Medley, Texas, on the International & Great Northern Railroad, to Galveston, Texas, shall be six (6) cents per 100 pounds.

JOHN H. REAGAN, *Chairman.*
W. P. MCLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 81, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, this the 15th day of March, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR NO. 82.

Amending Commodity Tariff No. 12.

AUSTIN, TEXAS, March 16, 1892.

It is hereby ordered that Commodity Tariff No. 12, adopted by the Railroad Commission of Texas February 22, 1892, be amended by adding thereto the 6th exception, as follows:

6TH EXCEPTION.

The rates on lime, carloads, from Austin and McNeil to Taylor and stations on the International & Great Northern Railroad north thereof; and to all stations on lines of railroad and their connections north of Taylor, Rockdale, Milano, Hearne, Jacksonville, Mineola and Longview, including the line of the Texas & Pacific north of Longview to Texarkana, inclusive, and all stations west thereof, shall be the same as rates fixed by mileage from Round Rock.

Effective April 5, 1892.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 82, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, this the 16th day of March, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR NO. 83.

Authorizing certain Rates of Freight for application from and to Stations on the Velasco Terminal Railway.

AUSTIN, TEXAS, March 16, 1892.

Authority is hereby granted for the adoption and application of the local rates of freight between stations on the Velasco Terminal Railway, the joint rates of freight

between stations on the Velasco Terminal Railway, and those named on the International and Great Northern Railroad, and the basis for making joint rates of freight between stations on the Velasco Terminal Railway, and all other stations in Texas, as specified below:

FREIGHT TARIFF.

International & Great Northern Railroad, No. 64.
Velasco Terminal Railway, No. 1.

Applying on *merchandise*, by classes, between Velasco and stations on the Velasco Terminal Railway and between Velasco and East Columbia, Houston, and Galveston; and on *cotton* from Houston to Velasco, via Chenango Junction. Subject to current classification authorized by the Railroad Commission of Texas:

BETWEEN VELASCO AND	RATES IN CENTS PER 100 POUNDS. CLASSES.									
	1st	2d	3d	4th	5th	A.	B.	C.	D.	E.
Chenango Junction and intermediate stations on Velasco Terminal Railway	20	20	20	20	15	15	15	13	11	8
East Columbia & Houston	20	20	20	20	15	15	15	13	11	8
Galveston	25	25	25	25	20	20	20	16	15	12

The above rates between Velasco and East Columbia, Houston and Galveston, will not apply between Velasco and intermediate stations not specified.

COTTON.

Rate on cotton from Houston to Velasco, 7 cents per 100 pounds.

FREIGHT TARIFF.

International & Great Northern Railroad No. 65.
Velasco Terminal Railway No. 2.

Applying on *merchandise*, by classes, between stations on the *Velasco Terminal Railway*, and stations on the *International & Great Northern R. R.*, as specified below. Subject to current classification as authorized by the Railroad Commission of Texas.

	RATES IN CENTS PER 100 POUNDS									
Between stations on the Velasco Terminal Railway, south of Chenango Junction (except as provided for in foot note below).	CLASSES.									
And	1st	2d	3d	4th	5th	A	B	C	D	E
Houston, East Columbia and intermediate stations on the I. & G. N. R. R	40	35	30	26	24	25	23	20	18	13
Galveston and intermediate stations on the I. & G. N. R. R., south of Houston	50	45	40	31	29	30	28	25	23	18

NOTE.—For rates between Velasco proper and East Columbia, Houston and Galveston, see freight tariff above, designated as I. & G. N. R. R., No. 64—V. T. Ry., No. 1.

BASES FOR JOINT RATES,

No. 1. To make rates between all points on the Velasco Terminal Railway, south of Chenango Junction, and stations in Texas not provided for in the foregoing tariffs, add the rates set forth in Velasco Terminal Railway Tariff No. 2 (I. and G. N. R. R., No. 65), above, as applying between Houston and stations on the Velasco Terminal Railway, to the local class rates applying between Houston and Arcola and other stations in Texas, until the following through class rates are reached: 1st class, 98; 2d class, 90; 3d class, 77; 4th class, 70; 5th class, 54; class A, 58; class B, 51; class, C, 41; class D, 30; class E, 23.

No. 2. *Exception to Basis No. 1.* Current class rates between Galveston and all points in Texas, which exceed the through class rates named in Basis No. 1, shall apply between all stations on the Velasco Terminal Railway, and the same points.

No. 3. The rates on *cotton* from all points in Texas, except those on the Columbia Branch of the International and Great Northern Railroad to Velasco, shall be made by adding seven (7) cents per 100 pounds to the rates applying on the same commodity from such points to Houston.

The terms of this circular shall not be employed to affect freight traffic subject to the tariffs and rulings of the Railroad Commission of Texas, except in cases where such traffic is specifically stated.

This order shall take effect and be in force on and after

April 5, 1892, thereupon cancelling Circular No. 62, issued by this Commission February 24, 1892.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 83, authorizing certain rates of freight for application from and to stations on the Velasco Terminal Railway, this day adopted by the Railroad Commission of Texas.

Given under my hand, and the seal of the Rail road Commission of Texas, at the city of Austin, this the 16th day of March, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 84.

Amending Commodity Tariff No. 13.

AUSTIN, TEXAS, March 16, 1892.

It is hereby ordered that Commodity Tariff No. 13, adopted by the Railroad Commission of Texas March 15, 1892, and effective April 4, 1892, be amended as follows:

Effective April 4, 1892.

Cancel second exception on page 2, and substitute the following:

SECOND EXCEPTION.

The rate on beef cattle, stock cattle and oxen in carloads from Mustang, Arcola and Dukes, stations on the Gulf, Colorado & Santa Fe Railway, to Houston and Galveston, shall be 5 cents per 100 pounds.

JOHN H. REAGAN, *Chairman,*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 84, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 16th day of March, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 85.

Amending Commodity Tariff No. 9.

(Cancelling Circular No. 46.)

AUSTIN, TEXAS, March 17, 1892.

It is hereby ordered that Commodity Tariff No. 9, adopted by the Railroad Commission of Texas October 16, 1891, and effective November 5, 1891, be amended as follows:

Rate on *lignite, in car loads*, from Lytle, Texas, a station on the International & Great Northern Railroad, to San Antonio, effective March 27, 1892, 40 cents per ton of 2000 pounds.

JOHN H. REAGAN, *Chairman*,
W. P. McLEAN,
L. L. FOSTER, *Commissioners*.

I hereby certify that the above is a true and correct copy of Circular No. 85, amending Commodity Tariff No. 9, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 17th day of March, 1892.

J. J. ARTHUR, *Secretary*.

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 86.

(Cancelling Circular No. 85.)

Amending Commodity Tariff No. 9.

AUSTIN, TEXAS, March 19, 1892.

It is hereby ordered that Commodity Tariff No. 9, adopted by the Railroad Commission of Texas, October 16, 1891, and effective November 5, 1891, be amended as follows:

Rate on *lignite, in car loads*, from Lytle, Texas, a station on the International & Great Northern Railroad, to

San Antonio, Texas 40 cents per ton of 2000 pounds—minimum weight, 20 tons per car load.

Effective March 28, 1892.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 86, amending Commodity Tariff No. 9, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission, of Texas at the city of Austin, this the 19th day of February, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 87.

Amending Commodity Tariff No. 13.

AUSTIN, TEXAS, March 19, 1892.

It is hereby ordered that Commodity Tariff No. 13, adopted by the Railroad Commission of Texas March 15, 1892, and effective April 4, 1892, be amended as follows:

On shipments passing over the Houston and East and West Texas Railway, the minimum weight will be 20,000 pounds per car.

JOHN H. REAGAN, *Chairman,*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 87, amending Commodity Tariff No. 13, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 19th day of March, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 88.

Authorizing the Adoption of Classification Rulings.

AUSTIN, TEXAS, March 19, 1892.

Authority is hereby granted for the adoption and application of Classification Rulings, supplemental to Western Classification No. 13, dated at Chicago March 15, 1892, on shipments of freight passing between points in Texas, subject to conditions named in Circular No. 54, issued by this Commission on December 21, 1891.

Effective March 29, 1892.

JOHN H. REAGAN, *Chairman.*
W. P. MCLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 74, authorizing the adoption of Classification Rulings dated at Chicago, March 15, 1892, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 19th day of March, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 89.

Amending Commodity Tariff No. 4.

AUSTIN, TEXAS, March, 21, 1892.

It is hereby ordered that Commodity Tariff No. 4, adopted by the Railroad Commission of Texas, September 12, 1891, and effective October 5, 1891, be amended as follows:

Effective March 31, 1892.

The rate on Cotton Seed Meal and Cake, in car loads, from Houston, Texas, to Velasco, Texas, a station on the Velasco Terminal Railway, shall be $1 per ton of 2240 pounds.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 89, amending Commodity Tariff No. 4, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas at the city of Austin, this the 21st day of March, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS,

CIRCULAR No. 90.

Amending Commodity Tariff No. 13.

AUSTIN, TEXAS, March 24, 1892.

It is hereby ordered that Commodity Tariff No. 13, adopted by the Railroad Commission of Texas, March 15, 1892, and effective April 4, 1892, be amended by adding thereto 4th exception, as follows:

4TH EXCEPTION.

The rates on Live Stock subject to Commodity Tariff No. 13 shipped from Karnes City and stations on the San Antonio & Aransas Pass Railway south thereof, including those on the Alice Branch, to all stations on the San Antonio & Aransas Pass Railway, and to Galveston, shall be ten (10) per cent. higher than the rates prescribed in said Commodity Tariff No. 13. Effective April 4, 1892.

JOHN H. REAGAN, *Chairman,*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 90, amending Commodity Tariff No. 13, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 24th day of March, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS,

CIRCULAR No. 94.

Cancelling Circular No. 91.

AUSTIN, TEXAS, March, 26, 1892.

Circular No. 91, issued by the Railroad Commission of Texas, March 24 1892, to amend Commodity Tariff No. 14, is hereby cancelled, and shall not become operative.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 94, cancelling Circular No. 91, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 26th day of March, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF THE
RAILROAD COMMISSION OF TEXAS,

CIRCULAR No. 92.

Amending Commodity Tariff No. 13.

AUSTIN, TEXAS, March 24, 1892.

It is hereby ordered that Commodity Tariff No. 13, adopted by the Railroad Commission of Texas, March 15, 1892, and effective April 4, 1892, be amended as follows:

Effective April 4, 1892.

On shipments passing over the Texas Mexican Railway the minimum weight will be 20,000 pounds per car.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 92, amending Commodity Tariff No. 13, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad

Commission of Texas at the city of Austin, this the 24th day of March, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR NO. 93.

Amending Commodity Tariff No. 3.

AUSTIN, TEXAS, March 23, 1892.

It is heredy ordered that Commodity Tariff No. 3, adopted by the Railroad Commission of Texas, September 1, 1891, and effective September 23, 1891, be amended as follows:

Effective April 4, 1892.

The rate on *lumber* car loads, minimum weight 24,000 pounds, from Velasco to Angleton, a station on the Velasco Terminal Ry., shall be three (3) cents per 100 pounds.

JOHN H. REAGAN, *Chairman.*
L. L. FOSTER,
W. P. McLEAN, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 93, amending Commodity Tariff No. 3, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 25th day of March, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 94.

Cancelling Circular No. 91.

AUSTIN, TEXAS, March 26, 1892.

Circular No. 91, issued by the Railroad Commission of Texas, March 24, 1892, to amend Commodity Tariff No. 14, is hereby cancelled and shall not become operative.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 94, canceling Circluar No. 91, this day adopted by the Railroad Commission of Texas, at the city of Austin, this the 26th day of March, 1892.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 26th day of March, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 96.

Establishing rates for the transportation of freight between stations on the Rio Grande Railroad.

AUSTIN, TEXAS, March 29, 1892.

It is hereby ordered that the rates of freight set forth in the following tables, together with the regulations and conditions in relation thereto prescribed below, shall apply on shipments of merchandise and property of every kind transported between stations on the Rio Grande Railroad, including Brownsville, end of track in Laguna Madre and intermediate stations; subject to classification, as approved by the Railroad Commission of Texas, (Western classification No. 13 and exceptions to Western classification applicable to Texas traffic.)

This order shall become effective and be in force on and after the 20th day of April, 1892.

Class Rates in Cents per 100 pounds

Between	And	Less Than Car Load.					Car Loads				
		1	2	3	4	5	A	B	C	D	E
Brownsville	End of track in Laguna Madre....	30	26	22	19	14	16	15	12	10	7
Brownsville	Point Isabel and intermediate stations	26	21	17	15	12	14	13	11	9	6
Point Isabel	End of track in Laguna Madre....	10	8	6	5	4	4	4	4	3	3

COMMODITY RATES.

In cents per 100 pounds, except where otherwise specified.

MEMORANDUM.—The station designated in headings as End of Track, is at end of track in Laguna Madre.

ARTICLES.	Between Brownsville and Point Isabel.		Between Brownsville and End of Track.		Between Point Isabel and End of Track.	
	L.C.L.	C. L.	L.C.L.	C. L.	L.C.L.	C.L.
Brick, common, per 1000 brick	...	1 25	...	1 25	...	50
Brick, fire	...	1 65	...	1 65	...	65
Calves, goats, hogs and sheep	...	7½	...	7½	...	3
Cattle and oxen	...	7½	...	7½	...	3
Cement and plaster, straight or mixed car-loads, or mixed with plasterers' hair	...	10	...	10	...	3
Coal, soft and coke, per ton of 2000 pounds	...	80	...	80	...	25
Coal, hard and blacksmith's, per ton of 2000 pounds	...	1 00	...	1 00	...	25
Cotton in bales, any quantity	13	...	13	...	5	...
Cotton seed	...	10	...	10	...	3
Cotton seed hulls	...	6	...	6	...	2
Cotton seed ashes, cake and meal, straight or mixed car loads	...	9	...	9	...	3
Cotton seed oil	...	10	...	10	...	3
Flour (see Note 1 below)	17½	10	17½	10	5	3
Grain (see Note 2 below)	16	8	16	8	5	3
Horses and mules	...	8½	...	8½	...	3
Lime (see Note 3)	...	10	...	10	...	3
Lumber (see Note 4)	...	7½	...	7½	...	2
Salt	16	10	16	10	5	3
Sand and stone	...	6	...	6	...	2
Wood, per cord	...	1 10	...	1 10	...	40
Wool, any quantity	20	...	20	...	6	...

NOTES.

1. Flour rates apply on flour, corn meal, oat meal, grits and hominy, in barrels, boxes or sacks. When in car loads, these articles may be loaded together, or with bran to make a car load, chargeable at car load rate on flour.

2. Grain rates (c. l.) apply on wheat, corn, rye, oats, barley, malt, bran, hay, mill feed and millstuff, in straight or mixed car loads, and grain rates (l. c. l.) apply on the same commodities, and on castor beans in less than car load lots.

3. Lime, cement and plaster, in mixed car loads or mixed with plasterers' hair, will be subject to car load rate of ten (10) cents per 100.

4. Lumber rates apply on lumber, lath, shingles, piling and wooden fence posts, in straight or mixed car loads.

By the establishment of the foregoing commodity rates the Rio Grande Railroad shall, on and after the date upon which this tariff takes effect, be exempted from the operation of Commodity Tariffs Nos. 3, 4, 6, 9, 10, 13, 14 and 15, issued by the Railroad Commisfion of Texas.

Additional Commodity Rates, in cents per 100 pounds, between end of track in Laguna Madre and stations named in headings of this table.

ARTICLES.	BROWNSVILLE.		POINT ISABEL.	
	L. C. L.	C. L.	L. C. L.	C. L.
Bones, Hoofs and Horns, straight or mixed car loads		9		3
Cotton in sacks, any quantity	18		5	
Hides, Pelts and Skins, dry in bales (straight or mixed when in car loads)	20	14	6	4
Hair, Cattle, in bales		12		
Ixtle	22	15		
Sugar, shipped from Brownsville only		10		
Tobacco, unmanufactured, in hogsheads or fractions of hogsheads		14		

RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 96, PAGE 2.

MINIMUM CAR LOADS.

The following minimum weights and measures shall be observed in applying car load rates on shipments of the articles named:

Hides, Pelts and skins, dry in bales, 8000 pounds per car.

Brick, common, 4000 brick per car.

Brick, fire, 3500 brick per car.

Coal, 8 tons per car.

Hay, straight car loads, 12,000 pounds per car.

Wood, 6 cords per car.

Other articles of freight, except where small quantities are specified in classification approved by Railroad Commission of Texas, 16,000 pounds per car.

For the information of all concerned the text of Circular No. 54, approving Western classification No. 13, issued by the Railroad Commission of Texas, December 21, 1891, is here inserted, and is as follows:

"Authority is hereby granted for the adoption and application of Western classification No. 13, on shipments of freight passing between points in the State of Texas, except where its ratings may be in conflict with the law of this State, viz.: Article 4257, Revised Statutes; with the tariffs and rulings of this Commission, or with existing exceptions to Western classification."

JOHN H. REAGAN, *Chairman.*
W. P. MCLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 96, establishing rates for the transportation of freight between stations on Rio Grande Railroad, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 29th day of March, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 98.

Amending Commodity Tariff No. 9.

AUSTIN, TEXAS, April 1, 1892.

It is hereby ordered that Commodity Tariff No. 9, adopted by the Railroad Commission of Texas October 16, 1891, and effective November 5, 1891, be amended as follows:

The rate on coal car loads, minimum weight 20 tons to the car, provided that marked capacity of the car is not less, in which case the marked capacity of the car will be the minimum weight, from Velasco, Texas, to Arcola Junction, on the International & Great Northern Railroad, 40 cents per ton of 2000 pounds.

Effective April 11, 1892.

JOHN H. REAGAN, *Chairman,*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 98, amending Commodity Tariff No. 9, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 1st day of April, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 59.

Amending Commodity Tariff No. 1.

AUSTIN, TEXAS, February 13, 1892.

It is hereby ordered by the Railroad Commission of Texas that Commodity Tariff No. 1, adopted August 13, 1891, and effective September 9, 1891, be amended as follows:

Rates to and from Galveston on articles named in Commodity Tariff No. 1, except hay, shall be made by adding 5 cents per 100 pounds to the Houston rate, without deducting 20 per cent., except where the regular mileage rate from Houston to Galveston (which is the rate for 50 miles), added to the rate to or from Houston, less 20 per cent., makes a lower rate.

Effective March 5, 1892.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 59, amending Commodity Tariff No. 1, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 13th day of February, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 95.

Authorizing the Adoption of Classification Rulings.

AUSTIN TEXAS, March, 28, 1892.

Authority is hereby granted for the adoption and application of Classification Rulings, supplemental to Western Classification No. 13, dated at Chicago March 23, 1892, on shipments of freight passing between points in

Texas, subject to conditions named in Circular No. 54, issued by this Commission on December 21, 1891.

Effective April 6, 1892.

JOHN H. REAGAN, *Chairman,*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 95, authorizing the adoption of Classification Rulings, dated at Chicago, March 23, 1892, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 28th day of March, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR NO. 98.

Amending Commodity Tariff No. 9.

AUSTIN, TEXAS, April 1, 1892.

It is hereby ordered that Commodity Tariff No. 9, adopted by the Railroad Commission of Texas October 16, 1891, and effective November 5, 1891, be amended as follows:

The rate on coal car loads, minimum weight twenty tons to the car, provided that marked capacity of car is not less, in which case the marked capacity of the car will be the minimum weight, from Velasco, Texas, to Arcola Junction, on the International and Great Northern Railroad, 40 cents per ton of 2000 pounds.

Effective April 11, 1892.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 98, amending Commodity Tariff No. 9, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 1st day of April, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 99.

Authorizing the Adoption of Classification Rulings.

AUSTIN, TEXAS, April 5, 1892.

Authority is hereby granted for the adoption and application of Classification Rulings supplemental to Western Classification No. 13, dated at Chicago, March 31, 1892, on shipments of freight passing between points in Texas, subject to conditions named in Circular No. 54, issued by this Commission on December 21, 1891.

Effective April 15, 1892.

JOHN H. REAGAN, *Chairman.*
L. L. FOSTER,
W. P. McLEAN, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 99, authorizing the adoption of Classification Rulings dated at Chicago, March 31, 1892, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas at the City of Austin, this the 4th day of April, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 100.

Amending Commodity Tariffs Nos. 13 and 15.

AUSTIN, TEXAS, April 5, 1892.

It is hereby ordered that Commodity Tariffs No. 13 and 15, adopted by the Railroad Commission of Texas March 15, 1892, and March 25, 1892, respectively, and effective April 4, 1892, and April 15, 1892, respectively, be amended by cancelling the 4th exception, and substituting therefor the following:

The rates on live stock, all kinds, from Karnes City and stations north thereof to San Antonio, Houston and Galveston, as published in San Antonio and Aransas Pass Railway specials Nos. 685 B, and 686 B, of April 17, 1891, and No. 747 B, of June 24, 1891, and from stations on the New York, Texas & Mexican Railway, west of and in-

cluding Goliad to Houston and Galveston, as published in Galveston, Harrisburg and San Antonio Railway Tariff No. 165, I. S., dated April 25, 1892, and effective May 10, 1892, shall remain in force.

The 4th exception to Commodity Tariff No. 13, was established by Circular No. 90, issued by this Commission March 24, 1892, and is hereby cancelled.

JOHN H. REAGAN, *Chairman,*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 100, amending Commodity Tariffs Nos. 13 and 15, and cancelling Circular No. 90, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 5th day of April, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILWAY COMMISSION OF TEXAS.

NOTICE.

AUSTIN, TEXAS, April 4, 1892.

To All Concerned: Inasmuch as Circular No. 13, issued by this Commission October 1, 1891, provides that "unless otherwise specified, freight may be hauled to and from any given points by any lines or combination of lines at the rate fixed by shortest mileage between such points, without affecting rates at intermediate points," it will not be necessary to repeat that provision of Circular No. 13 in the tariff hereafter to be issued by this Commission.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

Attest:

J. J. ARTHUR, *Secretary.*

IN THE

UNITED STATES CIRCUIT COURT.

For the Western Dtstrict of Texas.

IN THE FIFTH CIRCUIT. IN EQUITY. No. 187.

THE FARMERS LOAN AND TRUST COMPANNY,

TRUSTEE, COMPLAINANT.

Against

JOHN H. REAGAN, ET ALS., DEFENDANT.

EXHIBIT "C"

To Bill of Compaint.—Part III.

Filed April 30, 1892.
B. G. DUVAL, Clerk,
By D. H. HART, Deputy.

PART III.

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, April 5, 1892.

Due and legal notice, as provided by the act of the Twenty-second Legislature of Texas, approved April 3, 1891, establishing a Railroad Commission for the State of Texas and defining its duties, powers, etc., having been given by the Railroad Commission of Texas to each railroad company in said State, that said Commission would on July 6, 1891, begin the work of classifying and fixing rates of transportation on all freight and property of every kind, to be transported over railroads from point to point within said State, and that said work would be continued from day to day until finished, and the legally authorized agents and representatives of said

railroad companies, in pursuance of said notice, having appeared before said Commission at its sessions and had a full hearing upon said subjects, and said Commission having fully considered the subject of establishing rates on the commodities named in the subjoined Commodity Tariff No. 17, do fix and establish the rates therein set forth, which said rates shall go into effect on all railroads in the State of Texas on shipments of *junk* as described, from and to points within said State, on and after the 26th day of April, 1892, together with the regulations in relation thereto therein prescribed, and remain in force and effect until canceled by the said Commission.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

COMODITY TARIFF No. 17.

Issued by Railroad Commission of Texas. Effective April 26, 1892. Rates, in cents per 100 pounds, to apply by continuous mileage between all stations in Texas on shipments of *junk*, including bones, hoofs, horns, scrap metal, (brass, copper, iron, lead and zinc), scrap tin, old railroad rails and car wheels, old empty barrels, or tierces, old rubber, old leather, old rope, paper scrap, rags, broken glass, cotton tie clippings, in straight or mixed car loads, minimum weight, 20,000 pounds.

Rates between all stations in Texas, north, east and west of Houston.

DISTANCES.	RATES.	DISTANCES.	RATES.
20 miles and under	5	200 miles and over 180 miles	12
40 miles and over 20 miles	6½	300 miles and over 200 miles	12½
60 miles and over 40 miles	7½	350 miles and over 300 miles	13
80 miles and over 60 miles	8	400 miles and over 350 miles	14
100 miles and over 80 miles	8½	450 miles and over 400 miles	15
120 miles and over 100 miles	9	500 miles and over 450 miles	16
140 miles and over 120 miles	10	550 miles and over 500 miles	17
160 miles and over 140 miles	11	600 miles and over 550 miles	18
180 miles and over 160 miles	11½	Over 600 miles	20

EXCEPTIONS.

1. The rates for distances less than 200 miles, composed of the mileage of two or more lines of railroad not under the same management and control, shall be 20 per cent. higher than the rates set forth in the foregoing ta-

ble, provided that such rates shall not exceed 12½ cents per 100.

2. The rates for distances exceeding 200 miles, when points of origin or destination are situated on the following described lines of railroad shall be 15 per cent. higher than the rates set forth in the foregoing table:

Fort Worth & Denver City Ry	Stations north of Henrietta.
Texas & Pacific Ry	Stations west of Colorado City.
Gulf, Colorado & Santa Fe Ry	Stations west of Brownwood.
San Antonio & Aransas Pass Ry	Stations north of San Antonio.
San Antonio & Aransas Pass Ry	Stations on Alice Branch South of Skidmore.
Galveston, Harrisburg & San Antonio Railway	Stations west of Spofford Junction.
International & Great Northern R. R.	Stations south of Cotulla.
Texas Mexican Railway	All stations.

PROVIDED:

That the rates between stations on the Galveston, Harrisburg & San Antonio Railway west of and including San Antonio, shall not exceed 20 cents per 100 pounds.

3. The rates between Houston and Gainesville, Denison, Paris, Texarkana, and stations intermediate between those points and Houston, shall not exceed 12½ cents per 100 pounds.

4. The rates between stations on the Houston, East & West Texas Railway, shall be 10 per cent. higher than the rates set forth in the foregoing table, provided that such rates shall not exceed 12½ cents per 100 pounds.

RATES ON JUNK, LESS THAN CAR LOAD.

The ratss on junk, in quantities less than car load, shall be double the rates prescribed for car load shipments.

RATES FROM AND TO GALVESTON.

The rates on Junk, in car loads, between Galveston and Houston and intermediate stations shall be 5 cents per 100 pounds.

The rates on Junk, in car loads, between Galveston and all other points in Texas shall be 2¼ cents per 100 pounds higher than the rates between Houston and the same points, provided that such rates shall in no case be less than 10 cents per 100 pounds.

The rate on shipments of Junk, less than car load, between Galveston and Houston and intermediate points

shall be 10 cents per 100 pounds, and between Galveston and all other stations in Texas, 5 cents per 100 pounds higher than the rates between Houston and the same points.

STOP OVER PRIVILEGES.

The privilege of stopping cars at not more than three points intermediate between original points of shipment and destination, for the purpose of completing car loads, shall be allowed, provided that a charge of $5.00 shall be made for each stop.

(See following page. Railway Commission of Texas. Commodity Tariff No. 17. Page 2.)

EXEMPTIONS.

The Rio Grande Railroad shall be exempt from the operation of this tariff.

I hereby certify that the above is a true and correct copy of Commodity Tariff No. 17, this day adopted by the Railroad Commission of Texas.

Given under my hadd and the seal of the Railroad Commission of Texas at the city of Austin, this the 5th day of April, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.
AUSTIN, TEXAS, April 11, 1892.

Due and legal notice as provided by the act of the Twenty-second legislature of Texas, approved April 3rd, 1891, establishing a raiload commission for the State of Texas and defining its duties, powers, etc., having been given by the Railroad Commission of Texas to each railroad company in said State that said Commission would on July 6, 1891, begin the work of classifying and fixing the rates of transportation of all freight and property of every kind to be transported over railroads from point to point within said State, and that said work would continue from day to day until finished, and the legally authorized agents and representatives of said railroad companies, in pursuance of said notice, having appeared before said Commission at its session and had a full hearing upon said subjects, and said Commission having fully considered the subject of establishing rates on

the commodities named in the subjoined Commodity Tariff No. 18, do fix and establish the rates therein set forth, which said rates shall go into effect on all railroads in the State of Texas on shipments of *iron roofing and fencing* from and to points within said State on and after the 2nd day of May, 1892, together with the regulations in relation thereto therein prescribed, and remain in force and effect until canceled by said Commission.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

COMMODITY TARIFF NO. 18.

Issued by Railroad Commission of Texas. Effective May 2, 1892. Rates, in cents per 100 pounds, to apply by continuous mileage between stations in Texas on shipments of iron roofing and fencing.

	RATES.	
	Less than Carload.	Carload.
40 miles and under	10	7½
60 miles and over 40	14	10½
100 miles and over 60	16	12
200 miles and over 100	25	18
300 miles and over 200	27½	20
400 miles and over 300	30	22½
Over 400 miles	40	30

Minimum weight of car load shipments, 20,000 pounds.

The rates for distances of one hundred miles or less, composed of the mileage of two or more lines of railroad not under the same management and control, shall be twenty per cent. higher than the rates prescribed in the foregoing table.

EXEMPTIONS.

The following named lines of railroad shall be exempt from the operation of this tariff:

Brownsville & Gulf Railway,
Paris, Marshall & Sabine Pass Railway,
Rio Grande railroad,
Texarkana & Fort Smith railway,
Southern Kansas railway,
DeKalb & Red River railway,
Texas, Sabine Valley & North Western railway,
Rio Grande & Eagle Pass railway,

Weatherford, Mineral Wells and North Western railway.

Paris and Great Northern railway.

Rio Grande and El Paso railway.

NOTE.—This tariff shall not apply on shipments of fence wire on reels or in bundles.

I hereby certify that the above is a true and correct copy of Commodity Tariff No. 18, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, this the 11th day of April, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, April 15, 1892.

Due and legal notice, as provided by the act of the Twenty-second Legislature of Texas, approved April 3d, 1891, establishing a Railroad Commission for the State of Texas, and defining its duties, powers, etc., having been given by the Railroad Commission of Texas to each railroad company in said State, that said Commission would, on July 6, 1891, begin the work of classifying and fixing rates of transportation on all freight and property of every kind to be transported over railroads from point to point within said State, and that said work would be continued from day to day until finished, and the legally authorized agents and representatives of said railroad companies, in pursuance of said notice, having appeared before said Commission at its sessions, and had a full hearing upon said subjects, and said Commission having fully considered the subject of establishing rates on the commodities named in the subjoined Commodity Tariff No. 19, do fix and establish the rates therein set forth, which said rates shall go into effect on all railroads in the State of Texas, on shipments of *Live Stock*, as described, *in carloads*, from and to points within said State, on and after the 7th day of May, 1892, together with the regulations in relation thereto therein prescribed, and remain in force and effect until cancelled by the said Commission.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

COMMODITY TARIFF NO. 19.

Issued by Railroad Commission of Texas. Effective May 7, 1892. Rates in cents per 100 pounds, to apply by continuous mileage between stations in Texas on shipments of *Live Stock, in carloads*, as described below.

Table of Rates No. 1.

To apply on shipments of *stock cattle* transported from original point of shipment to destination over a single line of railroad, or over two or more lines of railroad under the same management and control:

DISTANCES.	RATES	DISTANCES.	RATES.
25 miles and under	5	250 miles and over 200 miles	12½
50 miles and over 25 miles	6¼	300 miles and over 250 miles	14
75 miles and over 50 miles	7½	350 miles and over 300 miles	16¼
100 miles and over 75 miles	8¾	400 miles and over 350 miles	17½
125 miles and over 100 miles	9	450 miles and over 400 miles	18¾
150 miles and over 125 miles	10	500 miles and over 450 miles	20
175 miles and over 150 miles	11	550 miles and over 500 miles	22½
200 miles and over 175 miles	11¼	Over 550 miles	25

Table of Rates No. 2.

To apply on shipments of *stock cattle* transported from original point of shipment to destination over two or more lines of railroad *not* under the same management and control:

Distances.	Rates.	Distances.	Rates.
25 miles and under	6	400 miles and over 350 miles	20
50 miles and over 25 miles	7½	450 miles and over 400 miles	21½
75 miles and over 50 miles	9	500 miles and over 450 miles	23
100 miles and over 75 miles	10½	550 miles and over 500 miles	25
125 miles and over 100 miles	11	600 miles and over 550 miles	27½
150 miles and over 125 miles	12	650 miles and over 600 miles	29
175 miles and over 150 miles	13½	675 miles and over 650 miles	31
200 miles and over 170 miles	15	700 miles and over 675 miles	32
250 miles and over 200 miles	16½	725 miles and over 700 miles	33
300 miles and over 250 miles	18	750 miles and over 725 miles	34
350 miles and over 300 miles	18½	Over 750 miles	35

Table of Rates No. 3.

To apply on shipments of *beef, cattle, oxen, calves, goats, hogs* and *sheep* transported from original point of shipment to destination over a single line of railroad or

over two or more lines of railroad under the same management and control:

Distances.	Rates.	Distances.	Rates.
25 miles and under	7	400 miles and over 350 miles	18¾
50 miles and over 25 miles	8	450 miles and over 400 miles	20
75 miles and over 50 miles	9	500 miles and over 450 miles	21¼
100 miles and over 75 miles	10	550 miles and over 500 miles	22½
125 miles and over 100 miles	11¼	600 miles and over 550 miles	25
150 miles and over 125 miles	12½	650 miles and over 600 miles	26¼
175 miles and over 150 miles	13	675 miles and over 650 miles	27½
200 miles and over 175 miles	14	700 miles and over 675 miles	28¾
250 miles and over 200 miles	15	725 miles and over 700 miles	30
300 miles and over 250 miles	16	750 miles and over 725 miles	31¼
350 miles and over 300 miles	17½	Over 750 miles	32½

TABLE OF RATES No. 4.

To apply on shipments of *Beef, Cattle, Oxen, Calves, Goats, Hogs* and *Sheep*, transported from original point of shipment to destination over two or more lines of railroad *not* under the same management and cotrol:

Distances.	Rates.	Distances.	Rates.
25 miles and under.....	9	400 miles and over 350 miles	21¼
50 miles and over 25 miles	10	450 miles and over 400 miles	22½
75 miles and over 50 miles	11	500 miles and over 450 miles	23¾
100 miles and over 75 miles	12½	550 miles and over 500 miles	25
125 miles and over 100 miles.	13¾	600 miles and over 550 miles	27½
150 miles and over 125 miles	15	650 miles and over 600 miles	29
175 miles and over 150 miles	16	675 miles and over 650 miles	31
200 miles and over 175 miles	17	700 miles and over 675 miles	32
250 miles and over 200 miles	18	725 miles and over 700 miles	33
300 miles and over 250 miles	19	750 miles and over 725 miles	34
350 miles and over 300 miles	20	Over 750 miles.....	35

TABLE OF RATES No. 5.

To apply on shipments of *Horses* and *Mules* transported from original point of shibment to destination over a single line of railrod or over two or more lines of railroad under the same management and control:

Distances.	Rates.	Distances.	Rates.
25 miles and under.....	9½	400 miles and over 350 miles	21¾
50 miles and over 25 miles	10½	450 miles and over 400 miles	22½
75 miles and over 50 miles	11½	500 miles and over 450 miles	23¾
100 miles and over 75 miles	12½	550 miles and over 500 miles	25
125 miles and over 100 miles	13¾	600 miles and over 550 miles	27½
150 miles and over 125 miles	15	650 miles and over 600 miles	28¾
175 miles and over 150 miles	15½	675 miles and over 650 miles	30
200 miles and over 175 miles	16½	700 miles and over 675 miles	31¼
250 miles and over 200 miles	17½	725 miles and over 700 miles	32½
300 miles and over 250 miles	18½	750 miles and over 725 miles	33¾
350 miles and over 300 miles	20	Over 750 miles	35

TABLE OF RATES No. 6.

To apply on shipments of *Horses* and *Mules* transported from original point of shipment to destination over two or more lines of railroad *not* under the same management and control:

Distances.		Rates.	Distances.		Rates.
25 miles and under		11½	400 miles and over	350 miles	23¾
50 miles and over	25 miles	12½	450 miles and over	400 miles	25
75 miles and over	50 miles	13½	500 miles and over	450 miles	26¼
100 miles and over	75 miles	15	550 miles and over	500 miles	27½
125 miles and over	100 miles	16¼	600 miles and over	550 miles	30
150 miles and over	120 miles	17½	650 miles and over	600 miles	31½
175 miles and over	150 miles	18½	675 miles and over	650 miles	33½
200 miles and over	175 miles	19½	700 miles and over	675 miles	34½
250 miles and over	200 miles	20½	725 miles and over	700 miles	35½
300 miles and over	250 miles	21½	750 miles and over	725 miles	36½
350 miles and over	300 miles	22½	Over 750 miles		37½

RULES AND REGULATIONS.

Subject to the provisions of the law of the State of Texas affecting the transportation of Calves, Goats, Hogs and Sheep in double deck cars. Art. 4227b, Sections 1 and 2, Sayles' Texas Civil Statutes.

1. *Minimum weight for Standard gauge cars.* The minimum weights of shipments of Beef Cattle, Stock Cattle, Oxen, Horses and mules in single deck cars and of Calves, Goats, Hogs and Sheep in double deck cars, shall be as follows, provided that cars exceeding 30½ feet in length shall be loaded to their full capacity:

INTERNAL MEASUREMENT.

Cars 30½ feet and under			20,000 pounds
Cars 32 feet and over	30½ feet		20,800 pounds
Cars 33 feet and over	32 feet		21,400 pounds
Cars 34 feet and over	33 feet		22,000 pounds
Cars 35 feet and over	34 feet		22,500 pounds
Cars 36 feet and over	35 feet		23,000 pounds
Cars 37 feet and over	36 feet		23,500 pounds
Cars over 37 feet			24,000 pounds

Cars exceeding 30½ feet in length being loaded short of their full capacity, the minimum weight of shipments contained in them shall be 20,000 pounds.

NOTE—This rule shall not be construed as imposing upon Railroad Companies the obligation to furnish cars of specific dimension.

2. The minimum weight of each shipment of Calves,

Goats, Hogs and Sheep, sufficient in quantity to load only a single deck car of standard gauge shall be 15,000 pounds.

3. Minimum weights for narrow gauge cars. The minimum weights of shipments of Stock Cattle, Beef Cattle, Oxen, Horses and Mules in single deck cars, and of Calves, Goats, Hogs and Sheep in double deck cars of narrow gauge shall be 20,000; and the minimum weight of shipments of Calves, Goats, Hogs and Sheep in single deck cars of narrow gauge shall be 15,000 pounds.

4. Shipments of Live Stock transported to points on lines of gauge different from that of lines on which points of origin are situated shall be subject to the minimum weights prescribed for narrow gauge cars.

5. Transportation of men in charge. Parties in charge of shipments of Live Stock in car loads shall be passed as follows, provided, that shipments exceeding two car loads shall be shipped to one consignor to one consignee:

With one or two cars.....One man without return pass.
With five cars and over two cars..One man with return pass
With more than five cars.....Two men with return pass.

It being understood that the return passes shall furnish transportation only to original point of shipment.

Each railroad company shall use proper methods to secure the identification of parties entitled to free transportation under this rule.

6. The rates and regulations of this tariff apply on shipments of Live Stock, as described, when transported in ordinary live stock or stable cars. When in palace stock cars the shipments will be charged the customary rental of the companies owning such cars in addition to the freight rates herein established.

A stable car is one having two gates which divide its interior into three compartments, while palace stock cars have a separate compartment for each animal.

EXCEPTIONS.

1st. The rate between Houston, Galveston and intermediate stations, on shipments of Live Stock subject to this tariff shall be 5 cents per 100 pounds.

2nd. The rate on Live Stock subject to this tariff, from Mustang, Arcola and Dukes stations on the Gulf, Colorado & Santa Fe Railway to Houston and Galveston, shall be 5 cents per 100 pounds.

3rd. The rates to Houston and Galveston from stations on the Columbia Branch of the International & Great Northern railroad shall not exceed the following named rates: On horses and mules to Houston 7½ cents, and to Galveston 10 cents per 100 pounds; on other classes of live stock subject to this tariff, to Houston 5 cents and to Galveston 6¼ cents per 100 pounds.

4th. The following rates on live stock subject to this tariff from stations on the San Antonio & Aransas Pass Railway to San Antonio shall remain in force: From Karnes City and Kennedy, 9¼ cents: From Nichols, Pettus and Walton, 10½ cents: From Beeville, 11¾ cents: From Skidmore, Papalota and Sinton, 13 cents: From Mesquital, 13 cents: From Gregory, Aransas Harbor, Rockport, Portland and Corpus Christi, 15½ cents: From Mathis, 14½ cents: From Wades, Reynolds, Driscoll and Alice, 16¼ cents per 100 pounds.

5th. The following rates on live stock subject to this tariff from stations on the San Antonio & Aransas Pass Railway Company to Houston and Galveston shall remain in force: From Karnes City, Sinton and intermediate stations to Houston, 17½ cents, to Galveston, 20 cents: From Mesquital, Gregory, Aransas Harbor, Rockport, Portland and Corpus Christi to Houston, 20 cents; to Galveston, 25 cents; from Mathis to Houston, 20 cents; to Galveston, 22½ cents, from Wades, Reynolds, Driscoll and Alice to Houston, 22½ cents; to Galveston, 27½ cents per 100 pounds. The rates from stations on the San Antonio & Aransas Pass Railway north of Karnes City shall be to Houston 17½ cents, and to Galveston 20 cents per 100 pounds, except in cases where the mileage rates prescribed in this tariff are higher.

6th. The rates on Live Stock subject to this tariff from Goliad, Beeville and intermediate stations on the Gulf, Western Texas & Pacific Railway shall be to Houston 17½ cents, and to Galveston 20 cents per 100 pounds.

7th. The following rates on beef cattle, oxen, horses and mules from stations named below, on the Galveston, Harrisburg & San Antonio Railway, and the Texas & New Orleans R. R., to Houston and Galveston shall be as follows: From Randon to Houston, 7½ cents; from Crosby to Houston, 5 cents; to Galveston, 10 cents; from Cedar to Houston, 6 cents; to Galveston, 11 cents; from Dayton to Houston, 7½ cents; to Galveston, 12½ cents;

from Devers to Houston, 7½ cents; to Galveston, 12½ cents; from Beaumont and Orange to Houston, 10 cents; to Galveston, 15 cents per 100 pounds.

CANCELLATION.

Commodity Tariffs Nos. 13 and 15 and Circulars Nos. 84, 87, 90, 92 and 100, together with all orders and authorities affecting the transportation of live stock heretofore issued by the Railroad Commission of Texas, will be hereby cancelled.

I hereby certify that the above is a true and correct copy of Commodity Tariff No. 19, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission, of Texas at the city of Austin, this the 15th day of April, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, April 18, 1892.

Due and legal notice, as provided by the Act of the Twenty-second Legislature of Texas, approved April 3, 1891, establishing a Railroad Commission for the State of Texas, and defining its duties, powers, etc., having been given by the Railroad Commission of Texas to each railroad company in said State, that said Commission would, on July 6, 1891, begin the work of classifying and fixing rates of transportation on all freight and property of every kind, to be transported over railroads from point to point within said State, and that said work would be continued from day to day until finished, and he legally authorized agents and representatives of said railroad companies, having appeared before said Commission at its sessions, and had a full hearing upon said subjects, and said Commission having fully considered the subject of establishing rates on the commodity named in the subjoined Commodity Tariff No. 20, do fix and establish the rates therein set forth, which said rates shall go into effect on all railroads in the State of Texas, on shipments of *wrapping paper* in car loads from and to points within said State, on and after the 9th day of May, 1892, together with the regulations in

relation thereto therein prescribed, and remain in force and effect until canceled by the said Commission.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

COMMODITY TARIFF NO. 20.

Issued by Railroad Commission of Texas. Effective May 9, 1892. Rates in cents per 100 pounds, to apply by continuous mileage between stations in Texas on shipments of *wrapping paper* in car loads. Minimum weight 20,000 pounds per car.

Distances.	Rates.	Distances.	Rates.
10 miles and under	10	170 miles and over 160 miles	26
20 miles and over 10 miles	11	180 miles and over 170 miles	27
30 miles and over 20 miles	12	190 miles and over 180 miles	28
40 miles and over 30 miles	13	200 miles and over 190 miles	29
50 miles and over 40 miles	14	210 miles and over 200 miles	30
60 miles and over 50 miles	15	220 miles and over 210 miles	31
70 miles and over 60 miles	16	230 miles and over 220 miles	32
80 miles and over 70 miles	17	250 miles and over 230 miles	33
90 miles and over 80 miles	18	300 miles and over 250 miles	34
100 miles and over 90 miles	19	350 miles and over 300 mlies	36
110 miles and over 100 miles	20	400 miles and over 350 miles	38
120 miles and over 110 miles	21	450 miles and over 400 miles	40
130 miles and over 120 miles	22	500 miles and over 450 miles	42
140 miles and over 130 miles	23	550 miles and over 500 miles	44
150 miles and over 140 miles	24	Over 550 miles	45
160 miles and over 150 miles	25		

EXCEPTION.

The rates on wrapping paper in car loads shall in no case exceed current Class B rates.

EXEMPTION.

The Rio Grande Railroad shall be exempt from the operation of this tariff.

I hereby certify that the above is a true and correct copy of Commodity Tariff No. 20, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Com-

mission of Texas, at the city of Austin, this the 18th day of May, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, April 18, 1892.

Due and legal notice, as provided by the act of the Twenty-second Legislature of Texas, approved April 3, 1891, establishing a Railroad Commission for the State of Texas, and defining its duties, powers, etc., having been given by the Railroad Commission of Texas to each railroad company in said State, that said Commission would, on July 6, 1891, begin the work of classifying and fixing rates of transportation on all freight and property of every kind to be transported over railroads from point to point within said State, and that said work would be continued from day to day until finished, and the legally authorized agents and representatives of said Railroad Companies, in pursuance of said notice, having appeared before said Commission at its sessions, and had a full hearing upon said subjects, and said Commission having fully considered the subject of establishing rates on the commodity named in the subjoined Commodity Tariff No. 21, do fix and establish the rates therein set forth, which said rates shall go into effect on all railroads in the State of Texas on shipments of *straw* in car loads from and to points within said State on and after the 9th day of May, 1892, together with the regulations in relation thereto therein prescribed, and remain in force and effect until canceled by the said Commission.

JOHN H. REAGAN, *Chairman,*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

COMMODITY TARIFF NO. 21.

Issued by Railroad Commission of Texas. Effective May 9, 1892. Rates in cents per 100 pounds, to apply between stations in Texas on shipments of *straw in car loads.* Minimum weight, 15,000 pounds per car.

Distances.	Rates.	Distances.	Rates.
10 miles and under	4	110 miles and over 100 miles	9½
20 miles and over 10 miles	5	120 miles and over 110 miles	10
30 miles and over 20 miles	5½	130 miles and over 120 miles	10½
40 miles and over 30 miles	6	140 miles and over 130 miles	11
50 miles and over 40 miles	6½	150 miles and over 140 miles	11½
60 miles and over 50 miles	7	175 miles and over 150 miles	12
70 miles and over 60 miles	7½	200 miles and over 175 miles	13
80 miles and over 70 miles	8	225 miles and over 200 miles	14
90 miles and over 80 miles	8½	Over 225 miles	15
100 miles and over 90 miles	9		

The rates on shipments passing from point of origin to destination over two or more lines of railroad not under the same management and control, shall be made by adding together the rates for the mileage of each of the lines forming such through line, as prescribed in the foregoing table, and then deducting twenty per cent. from the total; provided that the rates so made shall in no case exceed 17½ cents per 100 pounds.

The Rio Grande railway shall be exempt from the operation of this tariff.

I hereby certify that the above is a true and correct copy of Commodity Tariff No. 21, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas at the city of Austin, this the 18th day of April, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 101.

Amending Circular No. 100.

AUSTIN, TEXAS, April 6, 1892.

The reference to dates of Galveston, Harrisburg and San Antonio Railway Tariff No. 165, I. S., contained in Circular No. 100, issued by this Commission, April 5th, 1892, shall be as follows: "dated April 25th, 1891, and effective May 10th, 1891," instead of "1892," as specified.

JOHN H. REAGAN, *Chairman.*
W. P. MCLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 101, correcting Circular No. 100, this day issued by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 6th day of April, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 102.

Authorizing Classification on Fire Kindlers.

AUSTIN, TEXAS, April 7, 1892.

It is hereby ordered that *Fire Kindlers* in the shape of bricks manufactured of cotton seed hulls and rosin, transported between stations in Texas, shall be subject to charges as follows:

Less than car loads.....4th class rates
Car loads.....Class E rates

Effective April 29th, 1892.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 102, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 7th day of April, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 103.

Amending Commodity Tariff No. 3.

AUSTIN, TEXAS, April 14, 1892.

It is herby ordered that Commodity Tariff No. 3, adopted by the Railroad Commission of Texas, September 1, 1891, and effective September 23, 1891, be amended by adding thereto the 16th Exception, as follows:

The rates on Lumber, Lath and Shingles from milling points on the Houston, East & West Texas Railway

north of Corrigan, shall not exceed the rates from Corrigan and points south thereof to stations in the Territory north of and including Groesbeck, Waco and McGregor, and west of and including Paris, Wolf City, Greenville, Corsicana and Mineola, as established by the 3d Exception contained in Circular No. 27, which was issued by this Commission October 21, 1891.

Effective May 4, 1892.

JOHN H. REAGAN, *Chairman,*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 103, amending Commodity Tariff No. 3, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the city of Austin, this the 14th day of April, 1892.

J. J. ARTHUR, *Secretary.*

OFFICE OF
RAILROAD COMMISSION OF TEXAS.

CIRCULAR No. 104.

Authorizing the adoption of Classification Rulings.

AUSTIN, TEXAS, April 19, 1892.

Authority is hereby granted for the adoption and application of Classification Rulings supplemental to Western Classification No. 13, dated at Chicago, April 15th, 1892, on shipments of freight passing between points in Texas, subject to conditions named in Circular No. 54, issued by this Commission on December 21st, 1891.

Effective April 29th, 1892.

JOHN H. REAGAN, *Chairman.*
W. P. McLEAN,
L. L. FOSTER, *Commissioners.*

I hereby certify that the above is a true and correct copy of Circular No. 104, authorizing the adoption of Classification Rulings dated at Chicago, April 15, 1892, this day adopted by the Railroad Commission of Texas.

Given under my hand, and the seal of the Rail road Commission of Texas, at the city of Austin, this the 19th day of April, 1892.

J. J. ARTHUR, *Secretary.*

IN THE

CIRCUIT COURT OF THE UNITED STATES,

For the Western District of Texas.

IN EQUITY.

THE FARMERS' LOAN & TRUST CO.,
Complainant,
AGAINST
THE INTERNATIONAL AND GREAT NORTHERN RAILROAD CO., JOHN H. REAGAN and others.
} ORIGINAL BILL.

THE INTERNATIONAL AND GREAT NORTHERN RAILROAD CO.,
Complainant.
AGAINST.
THE FARMERS' LOAN & TRUST CO., JOHN H. REAGAN and others.
} CROSS-BILL.

CROSS-BILL OF THE INTERNATIONAL & GREAT NORTHERN RAILROAD COMPANY.

R. S. LOVETT,
Dallas, Texas,
Solicitor for Cross-Complainant.

ALEX. G. COCHRAN,
WINSLOW S. PIERCE,
Of Counsel.

Filed June 18, 1892.
B. G. DUVAL, Clerk,
By D. H. HART, Deputy.

IN THE

CIRCUIT COURT OF THE UNITED STATES,

For the Western District of Texas.

FIFTH CIRCUIT. IN EQUITY.

ORIGINAL BILL.

The Farmers' Loan & Trust Company, *Complainant,*

AGAINST

The International & Great Northern Railroad Company, John H. Reagan and others, *Defendants.*

CROSS-BILL.

The International & Great Northern Railroad Company, *Complainant.*

AGAINST

The Farmers' Loan & Trust Company, John H. Reagan and others, *Defendants.*

CROSS-BILL OF THE INTERNATIONAL & GREAT NORTHERN RAILROAD COMPANY.

To the Judges of the Circuit Court of the United States, for the Western District of Texas, Fifth Circuit, sitting in equity.

The International and Great Northern Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Texas, by leave of Court first had and obtained, brings this its cross-bill of complaint against The Farmers' Loan and Trust Company, the complainant herein, T. M. Campbell, a citizen and resident of the State of Texas; the "Railroad Commission of Texas," organized under an Act of the Legislature of the State of Texas, approved April 3d, 1891, and

which is a citizen of the State of Texas, and whose office is in the Western District of Texas, and which is a resident and inhabitant of said district; and John H. Reagan, William P. McLean and L. L. Foster, citizens and residents of the State of Texas, constituting said "Railroad Commission of Texas," and Chas. A. Culberson, a citizen and resident of said State of Texas; and thereupon, humbly complaining, your orator shows unto your Honors as follows:

FIRST. That on or about the 30th day of April, 1892, the said Farmers' Loan and Trust Company filed and exhibited in this Court its bill of complaint against your orator and against T. M. Campbell and said Reagan, McLean and Foster and Charles A. Culberson, as defendants, wherein and whereby the said Farmers' Loan and Trust Company, complainant, alleged, in substance:

That the defendants, Reagan, McLean and Foster, claiming to act as the Railroad Commission of Texas, and appointed under and by virtue of an Act of the Legislature of the State of Texas, approved on the 3d day of April, 1891, had announced and undertaken to establish and make effective as against your orator and other railroad companies operating railroads in the State of Texas, and as against said T. M. Campbell receiver of your orator's railroads and property, certain rates, tariffs, schedules and classifications for the transportation of commodities therein described over the lines of railway of your orator and of other railroad companies of the State of Texas.

That said complainant is trustee of the second mortgage, executed by your orator to secure its Second Mortgage Bonds, now outstanding to the amount of $7,054,000, issued for value, and payable to the bearer; that said mortgage is subject to prior lien and mortgage covering the property of your orator and securing outstanding indebtedness aggregating $7,954,000.

That the said rates, tariffs and classifications were not established by the said Commission fairly, nor in the method prescribed by said Act of April 3, 1891, nor upon due notice and hearing, nor in accordance with the evidence showing and information given afforded and available to the Commission. That the said rates, charges and classifications were unreasonable, unjust and confis-

catory, and would operate, if adopted by said Receiver or by your orator, to reduce the earnings of said International and Great Northern Railroad in a sum exceeding $200,000 per annum, and to impair and diminish the earning capacity, and, hence, the value of said property pledged to secure said Second Mortgage Bonds, and to destroy the property and interests of said Farmers' Loan and Trust Company, as trustee, and of the beneficiaries of its trust; and to take the same without due process of law, and to deny to your orator and to the said Trust Company, as trustee, and to the beneficiaries of its trust, the equal protection of the laws. That the enforcement of said rates would prevent said railroad from earning the interest upon the prior obligations of your orator and upon its said second mortgage bonds and the expenses of operation and maintenance, and would threaten foreclosure of liens, and sale of your orator's railroad and property, which would not then bring, and, by reason of its diminished earning capacity, would not be worth, a sum equal to said prior obligations, and, in addition thereto, any substantial proportion of said second mortgage indebtedness. That the rates, charges, tariffs and rules of the said Commission are made, by said act, conclusive in all cases except in a direct proceeding to test the reasonableness thereof to be instituted in a court of competent jurisdiction in Travis County, Texas, and that multiplied and excessive fines and penalties are denounced by said act for any violation of any order of the Commission or departure from the rates, charges and tariffs prescribed by the Commission. That by reason of the fact that said defendant Receiver would be, by the operation of said act, remediless and without defense in proceedings for such multiplied and excessive fines and penalties, and for alleged damages in case the unreasonable rates, tariffs and orders of the Commission be disregarded, said Receiver had feared to refuse and had declined to refuse to adopt and enforce, and had already adopted and proposed further to adopt and enforce, the said unreasonable, unfair and unjust tariffs, charges and rates, and that defendants Reagan, McLean and Foster, claiming to act as such Commission, and defendant Culberson, claiming to act as the Attorney-General of Texas, claim the right and threaten to exercise the powers purporting to be conferred upon them by said Commission Act in respect to the enforce-

ment of the rates of the Commission and the penalties for departure from said unreasonable and unjust tariffs established by it.

Complainant, in and by said bill of complaint, prayed for a decree cancelling and and annulling the tariffs already established by the Commission and restraining it from issuing further tariffs, and restraining your orator and said defendant Receiver from adopting or enforcing said tariffs, and enjoining the institution of suits and proceedings against your orator and said defendant Receiver for alleged violation of said tariffs and orders of the Commission. Complainant filed with it said bill of complaint, as exhibits thereto, copy of the said second mortgage of your orator to complainant as trustee, copies of the schedules, tariffs and circulars established and published by the Commission prior to the filing of the bill, and a copy of said Act of the Legislature of Texas, approved April 3, 1891. For the full terms, statements, allegations and prayer of said bill, and for the full terms and contents of said exhibits, your orator refers to the said bill and exhibits, respectively, with the same effect as if they were herein incorporated and set out.

Your orator files herewith its answer to said original bill of complaint, substantially admitting (as it could not deny) the allegations thereof; and now, to the end that it may represent to the court its own rights and interests, and those of its stockholders, in the premises, and may have the redress and relief to which it and they are entitled, it exhibits (with leave of court, as aforesaid) this its cross-bill of complaint, and further shows to the court as follows:

SECOND. Your orator avers that in addition to its bonded indebtedness alleged in the complaint, it has lawfully issued for value, and there is now outstanding, its capital stock to the amount of $9,755,000, out of an authorized capital stock of $25,000,000. That its said bonds and stock were issued in the manner and for the objects prescribed and authorized by its charter, and the same represent a part of the cost to your orator of its railroad, property and equipment, and of the renewal, replacement, improvement and betterment thereof, and represent the fair value of said property.

That for upwards of three years last past substantially all of the earnings from the railroad and property of your

orator in the hands of Receivers appointed by the District Court of Smith county, as alleged in the original bill of complaint herein of The Mercantile Trust Company, having been applied to the payment of the operating expenses and to the repair, renewal, improvement and equipment of said railroad and property; that the stockholders of your orator have never received any dividend or return whatever for or upon their investment of stock, but, on the contrary, said stockholders have, during the present year, been called upon and required to contribute a cash assessment of about 12 per cent. upon the par value of their stock, aggregating an amount upwards of one million dollars, for the purpose in large part of providing for a portion of the accrued interest upon your orator's First Mortgage bonds; that the holders of the first mortgage bonds of your orator have been required to accept and have accepted in payment of one-half of the accrued and defaulted interest thereon (namely, for the sum of upwards of $750,000), deferred Certificate of Indebtedness, issued by your orator, bearing interest at the rate of 5 per cent. per annum, the principal payable in six successive and equal yearly installments, beginning on the first day of November, 1892. That the holders of the Second Mortgage bonds of your orator have been called upon to fund, and substantially all of said holders have consented to fund, past due and defaulted interest upon said bonds, aggregating an amount upwards of $1,250,000, into deferred Third Mortgage bonds bearing 4 per cent. interest, such interest being payable only out of net earnings during the period of six years, from September 1, 1891, and only thereafter, absolutely. And the holders of said second mortgage bonds have been further required to reduce, and substantially all of said holders have agreed to reduce, the interest upon their bonds to 4½ per cent. per annum for the period of six years, from September 1, 1891, and thereafter to 5 per cent. per annum until the maturity of said bonds.

That your orator, having through the cash assessment paid by its stockholders and through the concessions of its bondholders hereinbefore recited, settled and adjusted its indebtedness and liens upon and in respect to which Receivers of its property were appointed, is now in a position to resume, and expects shortly to resume the

possession, control and operation of its lines of railway and property.

That the following statements show the earnings and expenses of the said railroad and property of your orator for the year ending December 31, 1891, and for the three months ending March 31, 1892.

INTERNATIOANL AND GREAT NORTHERN RAILROAD.

Income Account for Year Ending December 31st, 1891.

CR.

By Earnings—			
Passenger	$2,532,078 93		
Freight	892,560 63		
Mail	121,882 25		
Express	76,965 90		
Rent	2,212 50		
Miscellaneous	22,941 58		
		$3,648,641 79	
By Additional Receipts—			
Interest and Dividends	$2,860 00		
Canceled Pay Checks	2,959 21		
		5,819 21	
		$3,654,461 00	

DR.

To Operating Expenses—		
Conducting Transportation	$937,211 23	
Motive Power	970,817 43	
Maintenance of Way	853,502 87	
Maintenance of Cars	216,211 16	
General Expenses	115,807 51	
		$3,093,550 20

To Additional Expenses—

Taxes	$29,016 37		
Rental Colorado Bridge	14,618 32		
Payts acc't business prior to Receivership	73,638 15		
		117,272 84	
			$3,210,823 04
Surplus Earnings			$ 443,637 96

INTERNATIONAL AND GREAT NORTHERN RAILROAD.

Income Account for Three Months Ending March 31, 1892.

CR.

By Earnings—

Freight	$518,719 78	
Passenger	186,830 23	
Mail	30,759 15	
Express	15,930 38	
Rent	636 50	
Miscellaneous	6,300 14	
		$759,176 18
By Additional Receipts— Interest, Dividends, &c		3,523 35
		$762,699 53

DR.

To Operating Expenses—

Conducting Transportation	$224,960 61	
Motive Power	220,264 39	
Maintenance of Way	306,000 80	
Maintenace of Cars	52,602 53	
General Expenses	25,246 54	
		$829,074 87

To Additional Expenses—

Taxes	$ 711 90		
Rental, Colorado Bridge	3,640 00		
Payts acc't business prior to Receivership	9,381 85		
		13,733 75	
			$842,808 62
Excess of Expenses over Earnings			$ 80,109 09

That the following is a statement of the fixed charges of your orator for the years 1891 and 1892, respectively:

FIXED CHARGES, YEAR 1891.

6 per cent. on $7,954,000.00 1st Mtg. Bds	$477,240 00
6 per cent. on 7,054,000.00 2d " "	423,240 00
7 per cent. on 225,000.00 Colorado Bridge Company Bds	15,750 00
Sinking and Guarantee Fund Colorado Bridge Mtg.	3,000 00
Total	$919,230 00

FIXED CHARGES, YEAR 1892

6 per cent. on $7,954,000.00 1st Mtg. Bds.	$477,240 00
4½ per cent. on 7,054,000.00 2d " "	317,430 00
5 per cent. on 757,618.50 Ctf. of Indebtedness	37,880 92
7 per cent. on 225,000 00 Colorado Bridge Bonds	15,750 00
Sinking and Guarantee Fund Colo. Bridge	3,000 00
Total	$851,300 92

to which should be added annual installment of principal of said First Mortgage Certificate of Indebtedness issued for one-half of amount due on defaulted first mortgage coupons, to-wit, $126,269.75.

That the stockholders of your orator have never received any dividend or return whatever for or upon their

investment or stock. That, notwithstanding the inadequacy of the earnings of your orator's railroads to provide a fair and reasanable return upon the capital invested in or the value of its property, and notwithstanding the rates and charges for transportation in force upon your orator's railroads at the time the commission was established, were, as your orator now alleges the fact to be, very low and inadequate; and notwithstanding these conditions were represented to and were known to the Commission, and naught to the contrary thereof appeared, said Commission, without warrant or justification, proceeded to establish the reduced, unreasonable and unjust tariffs and regulations set forth in Exhibit C to the complaint, and has undertaken to require, and claims the right to require, conformity therewith on the part of said defendant Receiver and of your orator. Your orator here adopts and specially avers the statements and allegations contained in the seventh article or paragraph of the orignal bill of complaint herein, and avers that the same are in all respects true.

THIRD. Your orator admits and here avers all of the allegations contained in the eighth, ninth, tenth and eleventh paragraphs of the said original bill of complaint of the Farmers Loan and Trust Company, and asks that said allegations shall be deemed and taken to be by it made and as if herein incorporated; except that it avers upon information and belief that the diminution and reduction in the revenues of its railroads, consequent upon the adoption and enforcement of the rates and tariffs promulgated by the Railroad Commission, have been and will exceed the estimates alleged in the said bill of complaint.

Your orator avers that the revenues upon substantially all interstate business are absolutely controlled by the rates established by said Commission and in force for transportation within the State of Texas and from interior Texas points to Galveston, and such interstate rates therefore are practically established by the said Commission to the same extent as if interstate shipments were by law subject to the control of that body. The allegations in this behalf contained in the eleventh paragraph of the original bill of complaint herein are here particularly referred to, adopted and reaverred.

FOURTH. Your orator here adopts and avers all of

the allegations contained in paragraph twelfth of the original bill of complaint of the Farmers' Loan and Trust Company, and states that the same are true.

Your orator avers that by circular No. 34, established and published by the said Railroad Commission, included in Exhibit C to the original bill of complaint, the Commission undertakes, upon the demand of the owner of any freight or property contained in any car owned by your orator, or in its possession, to require said defendant Receiver to surrender and deliver said car to other railroad companies whose lines connect with those of your orator, to be used by said other railroad companies upon its own lines and connections in the transportation of the property contained in said car to any place off the line of your orator's railway designated by the owner of said property or freight. That under the terms of said circular the cars of your orator may be taken from the possession of said Receiver or of your orator and used as above stated, without his or its consent, without adequate compensation, and without other compensation for use thereot while off your orator's lines and out of his or its possession than a rental fixed by the Commission covering the period of such enforced bailment, and without any security for the safe or prompt return of said car or indemnity against damage or injury which may be done thereto.

Said circular further requires your orator and said Receiver, upon the tender to it or him of any car containing freight or property for transportation, and demand of the owner of such freight or property, or upon the demand of any railway company having such car in its possession, to receive the same for transportation, to any point on or beyond its own line which the owner of such freight or property may designate, and to pay to the railway company or person or corporation owning the car a mileage rate for every mile which said car may—under the direction of the owner of the freight therein, or of the said railway company tendering said car—be hauled over your orator's railway, although your orator owns and possesses a large number of cars for the transportation of property received by it or by said defendant Receiver as a common carrier, and has except during rare seasons of extraordinary business activity, a sufficient number of idle cars available for such use. And said circular fur-

ther requires that, after such car has been transported to the point designated by the owner of the freight contained therein, the same shall be returned and rehauled by your orator or said Receiver over your orator's railway and be re-delivered to the company from which it was received without any compensation whatever for such carriage and service.

And said circular further requires your orator or said Receiver to perform without compensation or reward any necessary switching service in receiving from or delivering to any connecting railway line such car.

Your orator submits that in the respects above recited, your orator is, and would be by said order and circular, and by the requirements of the Commission therein contained, deprived of its property without due process of law, and not in due course of law, contrary to Section 1 of Article 14 of the Amendmends of the Constitution of the United States, and of Sections 17 and 19 of Article 1 of the Constitution of the State of Texas.

That the effect and operation, and as your orator is informed and verily believes, the purpose of said circular is among other things the regulation of commerce between the State of Texas and other States and foreign countries, and the regulation of the rates of transportation of shipments of an interstate character, by permitting the interruption of such commerce and shipments at points within the State of Texas in such a way that a point intermediate between the real points of origin and destination of the shipments may be fixed as points of temporary destination, and the shipment re-billed from the latter point to its actual and final destination—the shipment in the State of Texas, between this temporary point and the actual and real point of origin or destination, taking the rate established by the said Commission and not the through interstate rate established under and in accordance with the Constitution and Laws of the United States.

In this respect, your orator shows that said order, rate and rule, so announced and published as said circular No. 34, and said Act of the Legislature of the State of Texas, purporting to confer upon said Railroad Commission power and authority to make, announce and enforce said order, rate and rule, are invalid and void, because in conflict with and in violation of Section 8 of Article 1 of the

Constitution of the United States, and an Act of Congress of the United States, entitled, "An Act to regulate commerce," approved February 4, 1887, and the amendments thereto.

FIFTH. Your orator here adopts and avers all of the allegations contained in the thirteenth paragraph of said original bill of complaint of the Farmers Loan and Trust Company, and shows that in Section 5 of said Act of the Legislature of Texas, establishing the said Railroad Commission, it is provided that in actions between private parties and railway companies, brought under said law, the rates, charges, orders, rules, regulations and classifications prescribed by said Commission before the institution of such action shall be held conclusive and deemed and accepted to be reasonable, fair and just, and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for that purpose in the manner prescribed by Sections 6 and 7 of said act. So that your orator alleges that, unless the relief herein sought be granted, its failure or the failure of said defendant Receiver to adopt and put into effect and use the ureasonably low and uncompensatory rates heretofore prescribed by said Commission would subject it and him to a multiplicity of suits brought by shippers for the penalties provided in Section 17 of said act; and that in such suits they would be deprived of the lawful defense that the rates and charges so prescribed by said Commission were and are unreasonable; and, so concluded and deprived of lawful defense, your orator or said Receiver would be subjected to innumerable penalties, ranging from $125 to $500 in each case, and your orator and said Receiver would be thereby denied the equal protection of the laws, and your orator would be deprived of its property without due process of law, and in a proceeding wherein liability was fixed in advance, contrary to the Constitution and Laws of the United States and to the Constitution and Laws of the State of Texas. Your orator furthermore alleges that in such suits by individual shippers it and said Receiver would be deprived of the right to a trial by jury of the issue involved in the said lawful defense, that said rates and charges were and are unreasonable, and that such deprivation of said right is and would be contrary to Section 15, Article 1 of the Constitution of the State of Texas.

Your orator avers that Section 6 of said act provides, that any railroad company or other party at interest, dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the Commission, may file a petition setting forth the particular cause or causes of objection to such decision, rule, etc., in a court of competent jurisdiction in Travis County, Texas, against said Commission as defendant; and Section 7 provides, that in all trials under Section 6 the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to them. Said Sections 6 and 7 provide the only contingency (except in suits on behalf of the State for penalties) in which railway companies may contest or controvert the reasonableness of a rate announced by the commission, and the effect of said act (except as to such suits on behalf of the State) is to withdraw wholly from all railway companies subject to the operation of the act, including your orator and said Receiver, the right to make the defense that any charges, regulations or classifications of the commission are unreasonable, and (with said exception) limits the making of that issue to an affirmative proceeding directly instituted for that purpose in a single local court, wherein the burden of proof is fixed as above recited; and the effect of said act is to deprive railway companies subject to the operation thereof of the right to make a lawful defense under and subject to settled rules of evidence in any psoceeding which may be instituted by individuals against it, thereby taking the property of said railway companies without due process of law, and denying to them the equal protection of the laws, contrary to the Constitution and Laws of the the United States, and especially Section 1 or Article 14 of the amendments to said Constitution, and to the Constitution and Laws of the State of Texas, and especially to Sections 3 and 19 of Article 1 of said Constitution of Texas.

Your orator further alleges that the defense that any rate or charge is unreasonable cannot, under the provisions of said act, be made in any such suit by individuals until said Court of Travis county has found that such rate or charge is not reasonable, fair or just; and the effect of said act in this respect is that upon such finding by the

Travis county Court the defense that such rate is unreasonable, unfair or unjust, may only thereafter be made in suits instituted by individuals shippers, so that, as your orator shows, the operation of said act is to deny the right to make such defense in such suits, by individual shippers, until there has been an adjudication upon such issue in a suit between other parties in the tribunal of Travis county, and thus the practical effect of said act is to deny the right of railway companies to make a lawful defense, pending the institution by said railway companies, in a different tribunal and against other parties, of a suit for the purpose of directly making the issue involved in said defense, and of making such issue under the adverse conditions and the extraordinary and abitrary presumptions and rules of evidence established by Section 7 of said act. In the meantime innumberable judgments may be recovered in suits by individuals, and said act provides no relief against such judgments, notwithstanding the said tribunal of Travis county may subsequently declare the rates and charges, for the violation of which said judgements of individuals may have been procured, were unfair unreasonable and unjust.

Moreover, your orator, as it is advised and believes, alleges that the right pretended to be conferred by said act, of contesting in a court of competent jurisdiction of Travis county the reasonableness, fairness or justness of any rate, charge or act of the said Commission, is without effect and without value to the railway companies or persons interested in the railways properties and subject to the operation of said act; for, as your orator is further advised and alleges, under the Constitution of the State of Texas establishing the judicial system of said State and defining the jurisdiction of the several courts, there exists in Travis county no court of competent jurisdiction in the premises. And in this behalf your orator further alleges that the Constitution of the State of Texas (Article V.) prescribes a complete judicial system for the said States, and the Legislature of the State of Texas is without power or authority to add to or take from the jurisdiction of the several courts of said State, as defined by said Constitution, or to create or constitute any court or judicial tribunal, or to invest any court created under or by virtue of the Constitution of the State of Texas, or

any body or tribunal conitituted by legislative act, with any judicial powers or jurisdiction whatever. And your orator avers that under the limitations of jurisdiction prescribed by the said Constitution of the State of Texas the courts of Travis county, in said State, and each and all of them, are wholly without jurisdiction and judicial power to entertain the petition of any railroad company or other party dissatisfied with the decision of rates, charges, etc., as provided in Section 6 of said Act of April 3, 1891, and said courts, and each and all of them, are without jurisdiction and judicial power to determine or adjudicate any of the matters purporting to be committed to them, or either of them, by said Sections 6 and 7 of said act.

Your orator shows that, even if it should be held that a court of Travis county would have jurisdiction of such an action, the remedy provided thereby would be wholly inadequate, if, pending the litigation, the tariffs of said Commission should be enforced, as provided in said act. And your orator shows that, under the practice of the State of Texas, the trial of such an action and appeal therein may be extended over a long period of time, and that a final and conclusive adjudication upon the reasonableness and justness of rates may not be obtained in a less time than one year from the institution of such an action, during which time your orator would suffer great and irreparable loss and injury under the enforcement of said tariffs or penalties, inasmuch as no provision is made in and by said act for restitution, in the event that it shall be finally held that the tariffs of said Commission, or any of them, are unjust and unreasonable.

SIXTH. Your orator further avers that the penalties denounced by said Act of April 3, 1891, for failure to comply with any of the provisions thereof, or with any of the rules, regulations, charges or rates prescribed and fixed by said commission, are wholly immoderate, unreasonable and excessive, and bear no just relation to the causes or matters with respect to which they are denounced, and that said excessive penalties are, as your orator verily believes, prescribed by said act with the view and intention that the same shall operate as a threat and menace to railway companies subject to the operation of said act, to the end that they may be there by compelled and coerced into the adoption of the rates and charges

prescribed by said Commission, whether or not the same shall be reasonable, fair and just. That the enforcement of the multiplied and excessive penalties prescribed by said act would result in serious loss and damage, and possible bankruptcy to railway companies subjected thereto, and the operation of said act in this respect is harsh, unreasonable and confiscatory, and your orator avers that said act constituting said Railroad Commission is, in this respect, contrary to and in violation of the Constitution of the State of Texas.

SEVENTH. Your orator shows that under the fear and apprehension of the excessive, immoderate and multiplied fines, penalties and damages denounced and provided for in said act, and by reason of the innumerable suits therein and thereby authorized and provided for, and the vast cost and expense attending the defense thereof, and notwithstanding that, as your orator believes and here avers that the tariffs, charges and orders established by said Commission are unfair, unjust and unreasonable, and notwithstanding your orator claims that the same cannot be made lawfully applicable to it or to said defendant Receiver said Receiver has put the same into effect upon your orator's lines of railway.

EIGHTH. Your orator avers that its mortgage bonds and stock were made and issued by it lawfully and in accordance with the powers and limitations conferred and prescribed by its charter. That it was not and is not competent for the Legislature of the State of Texas, directly or through any insturumentality or agency by it created, to fix and establish such rates or charges for services by it or by said defendant Receiver performed as to affect or diminish the earnings and revenues of and from its railroad and property or to affect or impair its present or ultimate ability to earn the interest upon its bonds, and in addition thereto a fair reward for the services by it performed; and therefore your orator avers that said Act of April 3, 1891, and said Commission's tariffs and regulations are, so far as they purport or are intended to apply to your orator and its business or to said Receiver, void and inoperative and violative of the rights and exemptions secured by your orator's charter.

Except as herein and hereby qualified your orator adopts and avers all the allegations contained in the said original bill of the Farmer's Loan ond Trust Company, complain-

ant, and asks that this averment be deemed and taken to be equivalent to the incorporation herein of all the said allegations, as so qualified, contained in said bill.

IN CONSIDERTION WHEREOF, and for as much as your orator is remediless in the premises under the rules of common law, and can have adequate relief only in a court of equity, where matters of this nature are properly cognizable and relievable, to the end, therefore, that the defendants hereinafter named may answer the several matters and things hereinbefore set forth as fully and particularly as if the same were herein again repeated and they were thereto interrogated; and that an injunction may issue out of this court restraining and enjoining said defendant T. M. Campbell, Receiver, from putting or continuing in effect the tariffs, circulars or orders of the said Commission, or either or any of them, herein described, and from charging or continuing to charge the rates specified in said tariffs, circulars or orders, or either or any of them, and restraining the said Reagan, McLean and Foster and the said Charles A. Culberson, and each of them, from instituting or authorizing or directing any others to institute any suit or suits, action or actions, against your orator or against said defendant Campbell as such Receiver, for the recovery of any penalties under and by virtue of any of the provisions of the Act of the Legislature of Texas, approved April 3, 1891, and restraining all other individuals, persons or corporations now or hereafter claiming any right under and by virtue of the said Commission law or said tariffs or either of them or both combined, or under and by virtue of the said tariffs or orders of the said Commission or either of them, from bringing or instituting suit or suits against your orator or against said Campbell as Receiver, for the recovery of any damages, overcharges, penalty or penalties under or by virtue of said Commission law or any any of its provisions, or under and by virtue of the said tariffs, orders or circulars of the said Commission or any or either of them, or under and by virtue of the said Commission law and the said tariffs, orders or circulars or any or either of them combined, and restraining the said Railroad Commission of Texas and said Reagan, McLean and Foster and each and all of them, from making, issuing or delivering to your orator, or to said Campbell, as Receiver, or causing to be promulgated, es-

tablished or made effective against it or him, any further tariff or tariffs, circulars or orders, and from attempting so to do; and that in the meantime until the hearing hereof your orator may have a temporary restraining order embracing all of the relief herein prayed for, such restraining order to continue in force until the termination of the hearing for a writ of injunction, and that on final hearing of this cause it may have all injunctions herein prayed made perpetual, and that all tariffs, circulars and orders heretofore made and issued by said Railroad Commission of Texas or by said Reagan, McLean and Foster, acting or claiming to act as said Railroad Commission of Texas, and each of them, may be cancelled and declared to be null, void and of no effect by a decree of this court, and that a mandatory injunction may be issued to the said Commission and said Commissioners, and each of them, commanding them to recall and abolish the said tariffs, circulars and orders, and each of them; and that such orders and decrees as may be made under the original bill of complaint herein of the Farmer's Loan and Trust Company, shall be adapted to the protection of your orator and of said Campbell as such Receiver, in respect of the matters herein alleged, and that your orator may have such further and other relief as this case may require, as well as all costs. May it please your Honors to grant unto your orator a writ or writs of subpœna to be issued out of and under the seal of this Honorable Court, and directed to the defendants, the Farmers' Loan and Trust Company, T. M. Campbell, the Railroad Commission of Texas, John H. Reagan, L. L. Foster and William P. McLean and Charles A. Culberson, commanding said defendants and each of them to appear in this court at some certain day to be therein named, and to answer the premises, but not under oath (answer under oath being expressly waived), and abide by and perform such decree as may be rendered herein.

THE INTERNATIONAL AND GREAT NORTHERN RAILROAD COMPANY,

By R. S. LOVETT,
Its Solicitor.

ALEX. G. COCHRAN,
WINSLOW S. PIERCE,
Of Counsel.

[SEAL.]

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:

HENRY B. HENSON, being duly sworn, says that he is the Assistant Secretary of The International and Great Northern Railroad Company, the complainant above named, and has been such for a number of years past; that he has read the foregoing cross-bill and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true; and, further, that the seal affixed to the said bill is the corporate seal of the complainant, and was affixed by him to said bill by authority of said complainant.

H. B. HENSON.

Sworn to and subscribed before me this 8th day of June, 1892.

ED. JACKSON,
[SEAL.] Notary Public, New York County.

IN THE

CIRCUIT COURT OF THE UNITED STATES,

For the Western District of Texas,

FIFTH CIRCUIT, IN EQUITY. No. 187.

ORIGINAL BILL.

THE FARMERS' LOAN & TRUST CO., TRUSTEE,
Complainants.

VS.

THE INTERNATIONAL & GREAT NORTHERN R'Y. CO. AND JOHN H. REAGAN ET AL, *Defendants.*

CROSS BILL.

THE INTERNATIONAL & GREAT NORTHERN R'Y. CO.,
Complainants.

VS.

THE FARMERS' LOAN & TRUST CO., TRUSTEE, AND JOHN H. REAGAN ET AL., *Defendants.*

To the Honorable Judges of Said Court:

The Farmers' Loan and Trust Company, trustee, complainant in the above entitled cause, now amends its bill of complaint herein filed, as follows, to wit:

FIRST. By adding at the end of paragraph eight the following words, viz:

"That there has been necessarily expended in cash in the construction and equipment of the lines of railroad aforesaid owned and operated by the International and

Great Northern Railroad Company, more than $50,000 per mile of such road, and that the same could not now be replaced for less than $30,000 per mile. That the lines of railway of said Company have at all times been operated as economically as practicable, and that its operating expenses have at all times been as reasonable and low in amount as they could be made by economical and judicious management, and that it has not been possible for said company to operate said road for less than it has been operated. That for the year ending June 30, 1892, there were employed by said company seventeen general officers, who received during said year an average daily compensation of $12.64; and exclusive of its general officers, all of its employees during and for the year ending June 30, 1892, received an average daily compensation of $2.01; and that at all times said company has secured the services of its officers and employees as cheaply as practicable and has employed no more than necessary, and that the above were fair and reasonable rates of pay. That at all times the International and Great Northern Railroad Company has secured all supplies, material and property, of whatever character, for the operation of its road at the cheapest market price, and at as low rates as the same could be secured, and has secured and used no more than actually necessary in the operation of the road. That your orator here refers to Exhibit "H," hereto attached and made part of this bill of complaint, the same being a copy of the sworn report made by the officers of the said company to the Railroad Commission of Texas, for the year ending June 30, 1892, on the forms prescribed by said Commission, which shows its operating expenses in detail, each and every item of which was as reasonable in amount and as low as practicable. Your orator alleges that the loss in revenue sustained by your said company by the observance and application of the tariffs established by the Railroad Commission of Texas, from the respective dates when said tariffs took effect until August 31, 1892, is as follows:

By tariff No. 1, effective September 9, 1891, and No. 24, effective July 9, 1892, on flour, grain, hay and salt, c. l. ..... $ 14,977 81

By Commodity Tariffs No. 2, effective September 14, 1891, and No. 6, effective October 12, 1891, on cotton 84,483 59

By Commodity Tariff No. 3, effective September 23, 1891, on lime, etc	$ 30,678 59
By Commodity Tariff No. 4, on cotton seed and its products, effective October 5, 1891	12,251 57
By Commodity Tariffs No. 5, effective October 8, 1891, and No. 9, effective November 5, 1891, on wood, coal and coke	4,714 96
By Commodity Tariff No. 7, effective October 21, 1891, and No. 8, effective October 30, 1891, on flour, grain, hay and salt, l. c. l.	3,075 22
By Commodity Tariff No. 10, effective November 16, 1891, on brick, sand and stone	2,025 66
By Commodity Tariff No. 11, effective March 9, 1892, on cement and plaster, and No. 12, effective March 14, 1892, on lime, c. l.	375 93
By Commodity Tariff No. 13, effective April 4, 1892, and No. 15, effective April 15, 1892, and No. 19, effective May 7, 1892, on live stock, c. l.	5,518 83
By Commodity Tariff No. 14, effective April 12, 1892, on wool	836 60
By Commodity Tariff No. 16, on pig iron c. l., effective April 23, 1892	298 25
By Commodity Tariff No. 17, on Junk, effective April 26, 1892. (No traffic handled.)	
By Commodity Tariff No. 18, on iron roofing, effective May 2, 1892	23 55
By Commodity Tariff No. 22, on fire brick and clay, effective June 13, 1892	28 88
By Commodity Tariff No. 23, on melons and vegetables, effective June 23, 1892	385 46
Total losses sustained from the respective dates from which said tariffs took effect until August 31, 1892	159,694 51

The tariffs established by the Commission effected an average reduction in the rates theretofore charged on the International and Great Northern Railroad substantially as follows:

Wheat, bran, corn and oats, c. l.	37	per cent.
Flour and meal, c. l.	43	" "
Salt	21	" "
Hay, (increase)	13	" "
Lumber, (decrease)	11.80	" "

Cotton seed and its products	7.40	per cent
Cotton	14.40	" "
Flour, l. c. l.	22	" "
Salt	52.30	" "
Grain, l. c. l.	54.90	" "
Coal	27.10	" "
Wood	12.30	" "
Brick, sand and stone	27.60	" "
Cement	5	" "
Lime, c. l.	19.10	" "
Wool	9.10	" "
Pig iron	7.80	" "
Junk, c. l.	17.40	" "
Live stock	23.40	" "
Straw	44.95	" "
Wheat, bran, corn and oats, Tariff No. 24.	16.80	" "
Flour and meal	6.40	" "
Hay	11.10	" "
Salt	25.90	" "

These figures give the general result of the commission's tariffs on the commodities named, after taking into account all increase, if any, between certain points.

And that if in force for the entire year would entail a loss in revenue upon said company exceeding $300,000 per annum. That the decrease in the International & Great Northern Railway Company's rates made by said Commission, have not and will not cause any such increase in the tonage or business ofits road, as will in any degree whatever make up or compensate for the loss in revenue caused by said reduction in rates. That said company before and during the period when said Commission tariffs were in effect and now charges as high passenger rates as are allowed by the laws of the State of Texas, and derived and derives all the revenue possible from any and all other sources, including interstate and foreign traffic. That the divisions of through rates now and at all times heretofore enjoyed by the International & Great Northern Railway Company, has exceeded and does greatly exceed the divisions of through rates on shipments moving between points within the State of Texas, which said company did or could derive under the rates fixed by said Commission: that is to say, for hauling the freight the same distance or performing the same services said

company received largely more revenue on business interchanged with interstate roads, or on foreign or interstate business than it did or could receive on business interchanged under the rates of said commission with roads within the State when the said freight was moving between points within the State and subject to the rates of said Commission; and that said company's interstate and foreign, as well as interstate and foreign rates of all other lines doing interstate and foreign business to and from Texas, now and at all times, have been higher than the rates fixed to the same or corresponding distance by the said Commission.

SECOND. By adding at the end of paragraph 14 the following words, viz:

13b. That on or about the 7th day of February, 1854, the legislature of the State of Texas passed an act which was duly approved by the governor, and which among other things provided:

"SEC. 1. Be it enacted, etc., that all railroad companies which have been heretofore incorporated, or which shall hereafter be incorporated or relieved from the performance of any act required of them, or which shall accept of any donation or loan from this State, or which shall accept of the subscription of any county of this State, shall have all the powers and privileges, and be subject to all the duties, liabilities and provisions contained in this act.

SEC. 15. It shall be lawful for the legislature at any time to prescribe the rates to be charged for the transportation of persons and property upon any such road should they be deemed too high, and may exercise the same power every ten years; provided, that no reduction shall be made unless the net profits of the company for the previous ten years, the expenditures of the company being bona fide, and not with a view to defeat the operation of this section, shall amount to a sum equal to 12 per centum per annum upon its capital stock, and then so as not to reduce the future probable profits below the said per centum."

That as aforesaid, said company was incorporated and all of its railway except about two hundred miles, was constructed while said act was in effect, the same not having been repealed until the year 1879, when it was omitted

by the commissions who compiled the Revised Civil Statutes of the State of Texas.

That the said act was never expressly repealed by the legislature of the State of Texas, and if ever repealed it was only repealed only by implication, by the adoption by the legislature of the Statutes as revised by the said Commissioners. Your orator avers that said act entered into and formed a part of the charter contract between said railway company, the State of Texas and the bondholders aforesaid. That each and all of the tariffs issued by said company putting into effect the rates of the said Commission were issued under protest, and there was printed thereon by your orator company, "This tariff was issued by order of the Railroad Commission of Texas under protest reserving the right to contest the same in the courts."

THIRD. Complainant reiterates each and every allegation in its original cross bill of complaint and prays the court to allow this amendment to be filed, and further prays as in its original bill prayed. And your orator prays for all other and further orders and for equitable relief in the premises.

FARRAR, JONAS & KRUTTSCHNITT,
TURNER, McCLURE & ROLSTON,
Solicitors for Complainant.

JNO. F. DILLON,
H. B. TURNER,
E. B. KRUTTSCHNITT,
of Counsel.

No. 187. (Endorsed.)

UNITED STATES CIRCUIT COURT.

Western District of Texas at Austin.

THE FARMERS' LOAN & TRUST COMPANY, TRUSTEE,
Complainant.

VS.

THE INTERNATIONAL & GREAT NORTHER RAILWAY COMPANY, ET ALS.

THE INTERNATIONAL & GREAT NORTHERN RAILWAY CO.

Cross-Compainant.

VS.

THE FARMERS' LOAN & TRUST CO., TRUSTEE,

JOHN H. REAGAN, ET ALS.

Amendment to Bill of Complaint.

Filed March 23, 1893.

B. G. DUVAL, *Clerk.*
By D. H. HART, *Deputy.*

IN THE

CIRCUIT COURT OF THE UNITED STATES,

For the Western District of Texas,

FIFTH CIRCUIT, IN EQUITY. No. 187.

ORIGINAL BILL.

THE FARMERS' LOAN & TRUST CO., TRUSTEE,
Complainants.

VS.

THE INTERNATIONAL & GREAT NORTHERN R'Y. CO. AND JOHN H. REAGAN ET AL, *Defendants.*

CROSS BILL.

THE INTERNATIONAL & GREAT NORTHERN R'Y. CO.,
Complainant,

VS.

THE FARMERS' LOAN & TRUST CO., TRUSTEE, AND JOHN H. REAGAN ET AL., *Defendants.*

To the Honorable Judges of Said Court:

The International & Great Northern Railroad, cross-complainant in the above entiled cause, now amends its cross-bill herein filed, as follows, to wit:

FIRST. By adding at the end of paragraph three the following words, viz:

"That there has been necessarily expended in cash in the construction and equipment of the lines of railroad

aforesaid owned and operated by your orator more than $50,000 per mile of such road, and that the same could not now be replaced for less than $30,000 per mile. That the lines of railway of your orator's company, have at all times been operated as economically as practicable, and that its operating expenses have at all times been as reasonable and low in amount as they could be made by economical and judicious management, and that it has not been possible for your orator to operate said road for less than it has been operated. That for the year ending June 30, 1892, there were employed by your orator's company seventeen general officers, who received during said year an average daily compensation of $12.64, and exclusive of its general officers, all of its employees during and for the year ending June 30, 1892, received an average daily compensation of $2.01, and that at all times your orator has secured the service and of its officers and employees as cheaply as practicable, and has employed no more than necessary, and that the above were fair and reasonable rates of pay. That at all times the International & Great Northern Railroad Company has secured all supplies, material and property, of whatever character, for the operation of its road at the cheapest market price and at as low rates as the same could be secured, and has secured and used no more than actually necessary in the operation of the road. That your orator here refers to Exhibit "H," the same being a copy of the sworn report made by the officers of said company to the Railroad Commission of Texas, for the year ending June 30, 1892, on the forms prescribed by said Commission, which shows its operating expenses in detail, each and every item of which was reasonable in amount and as low as practicable. Your orator alleges that the loss in revenue sustained by your orator company by the observance and application of the tariffs established by the Railroad Commission of Texas from the respective dates when said tariffs took effect until August 31st, 1892, is as follows:

By Tariff No. 1, effective September 9, 1891, and No. 24, effective July 9, 1892, on flour, grain, hay and salt, c. l.	$14,977 81
By Commodity Tariffs No. 2, effective September 14, 1891, and No. 6, effective October 12, 1891, on cotton	84,483 59

By Commodity Tariff No. 3, effective September 23, 1891, on lime, etc.	$ 30,678 59
By Commodity Tariff No. 4, on cotton seed and its products, effective October 5, 1891	12,251 57
By Commodity Tariffs No. 5, effective October 8, 1891, and No. 9, effective November 5, 1891, on wood, coal and coke	4,714 96
By Commodity Tariff No. 7, effective October 21, 1891, and No. 8, effective October 30, 1891, on flour, grain, hay and salt, l. c. l.	3,075 22
By Commodity Tariff No. 10, effective November 16, 1891, on brick, sand and stone	2,025 66
By Commodity Tariff No. 11, effective March 9, 1892, on cement and plaster, and No. 12, effective March 14, 1892, on lime, c. l.	375 93
By Commodity Tariff No. 13, effective April 4, 1892, and No. 15, effective April 15, 1892, and No. 19, effective May 7, 1892, on live stock, c. l.	5,518 83
By Commodity Tariff No. 14, effective April 12, 1892, on wool	836 60
By Commodity Tariff No. 16, on pig iron c. l., effective April 23, 1892	298 25
By Commodity Tariff No. 17, on Junk, effective April 26, 1892. (No traffic handled.)	
By Commodity Tariff No. 18, on iron roofing, effective May 2, 1892	23 55
By Commodity Tariff No. 22, on fire brick and clay, effective June 13, 1892	28 88
By Commodity Tariff No. 23, on melons and vegetables, effective June 23, 1892	385 46
Total losses sustained from the respective dates from which said tariffs took effect until August 31, 1892	159,694 51

The tariffs established by the Commission effected an average reduction in the rates theretofore charged on the International and Great Northern Railroad substantially as follows:

Wheat, bran, corn and oats, c. l.	37	per cent.
Flour and meal, c. l.	43	" "
Salt	21	" "
Hay, (increase)	13	" "
Lumber, (decrease)	11.80	" "

Cotton seed and its products	7.40	per cent
Cotton	14.40	" "
Flour, l. c. l.	22	" "
Salt	52.30	" "
Grain, l. c. l.	54.90	" "
Coal	27.10	" "
Wood	12.30	" "
Brick, sand and stone	27.60	" "
Cement	5	" "
Lime, c. l.	19.10	" "
Wool	9.10	" "
Pig iron	7.80	" "
Junk, c. l.	17.40	" "
Live stock	23.40	" "
Straw	44.95	" "
Wheat, bran, corn and oats, Tariff No. 24.	16.80	" "
Flour and meal	6.40	" "
Hay	11.10	" "
Salt	25.90	" "

These figures give the general result of the commission's tariffs on the commodities named, after taking into account all increase, if any, between certain points.

And that if in force for the entire year would entail a loss in revenue upon your orator company exceeding $300,000 per annum. That the decrease in the International & Great Northern Railway Company's rates made by said Commission, have not and will not cause any such increase in the tonnage or business of your orator's road, as will in any degree whatever make up or compensate for the loss in revenue caused by said reduction in rates. That your orator before and during the period when said Commission tariffs were in effect and now charges as high passenger rates as are allowed by the laws of the State of Texas, and derived and derives all the revenue possible from any and all other sources, including interstate and foreign traffic. That the divisions of through rates now and at all times heretofore enjoyed by the International & Great Northern Railway Company, has exceeded and does greatly exceed the divisions of through rates on shipments moving between points within the State of Texas, which your orator company did or could derive under the rates fixed by said Commission; that is

to say, for hauling the freight the same distance or performing the same services yonr orator company received largely more revenue on business interchanged with interstate roads, or on foreign or interstate business than it did or could receive on business interchanged under the rates of said commission with roads within the State when the said freight was moving between points within the State and subject to the rates of said Commission; and that your orator's interstate and foreign, as well as interstate and foreign rates of other lines doing iuterstate and foreign business to and from Texas, now and at all times, have been higher than the rates fixed to the same or corresponding distance by the said Commission.

SECOND. By adding at the end of paragraph 7 the following words, viz:

13b. That on or about the 7th day of February, 1854, the legislature of the State of Texas passed an act which was duly approved by the governor, and which among other things provided:

"SEC. 1. Be it enacted, etc., that all railroad companies which have been heretofore incorporated, or which shall hereafter be incorporated or relieved from the performance of any act required of them, or which shall accept of any donation or loan from this State, or which shall accept of the subscription of any county of this State, shall have all the powers and privileges, and be subject to all the duties, liabilities and provisions contained in this act.

SEC. 15. It shall be lawful for the legislature at any time to prescribe the rates to be charged for the transportation of persons and property upon any such road should they be deemed too high, and may exercise the same power every ten years; provided, that no reduction shall be made unless the net profits of the company for the previous ten years, the expenditures of the company being bona fide, and not with a view to defeat the operation of this section, shall amount to a sum equal to 12 per centum per annum upon its capital stock, and then so as not to reduce the future probable profits below the said per centum."

That as aforesaid, your orator company was incorporated and all of its railway except about two hundred miles, was constructed while said act was in effect, the same not hav-

ing been repealed until the year 1879, when it was omitted by the commissions who compiled the Revised Civil Statutes of the State of Texas.

That the said act was never expressly repealed by the legislature of the State of Texas, and if ever repealed it was only repealed only by implication, by the adoption by the legislature of the Statutes as revised by the said Commissioners. Your orator avers that said act entered into and formed a part of the charter contract between said railway company, the State of Texas and the bondholders aforesaid. That each and all of the tariffs issued by your orator company putting into effect the rates of the said Commission were issued under protest, and there was printed thereon by your orator company, "This tariff was issued by order of the Railroad Commission of Texas under protest reserving the right to contest the same in the courts."

THIRD. Complainant reiterates each and every allegation in its original cross bill of complaint and prays the court to allow this amendment to be filed, and further prays as in its cross bill prayed. And your orator prays for all other and further orders and for equitable relief in the premises.

R. S. LOVETT,
Solicitor for Cross Complainant.

W. W. HOWE,
WINSLOW S. PIERCE,
Of Counsel.

(Endorsed.)

No. 187. Farmers' Loan & Trust Co., vs. I. & G. N. R. R. Co., John H. Reagan et al. International & Great Northern Railway Co., vs. John H. Reagan et als. Amendment to cross bill of the International & Great Northern R. R. Co. Filed March 23, 1893. B. G. Duval, Clerk. By D. H. Hart, Deputy.

IN THE UNITED STATES CIRCUIT COURT,

For the Western District of Texas, at Austin.

THE FARMERS' LOAN AND TRUST COMPANY, *Complainant,*

No. 187. v.

THE INTERNATIONAL AND GREAT NORTHERN RAILWAY, JOHN H. REAGAN ET AL., *Defendants.*

The defendants, John H. Reagan, W. P. McLean, L. L. Foster and C. A. Culberson, respectfully ask leave of the Court to withdraw their answers heretofore filed by them in this cause to the original bill filed by complainant and the cross bill filed by the defendant railway company, and permit them to file a demurrer to said original complaint and cross bill, so that the same may be considered as if no answer had been filed to said original and cross action, and that the demurrer was filed on rule day, to which the subpœnas were returnable.

The purpose of this motion is to raise in a simple and direct manner the questions of law involved in this cause, and it has no other object in view. No delay will be occasioned thereby and no injury to complainant or cross complainant, inasmuch as the defendants offer to proceed immediately with the consideration of the demurrer, and if the same be overruled, leave will not be asked to file answers to said original and cross actions, but judgment may be rendered on said demurrer, and failure of defendants to answer said bill and cross bill, from which judgment defendants will appeal.

C. A. CULBERSON,
H. C. COKE,
W. S. SIMKINS,
Solicitors for Defendants.

(Endorsed). No. 187. The Farmers' Loan and Trust Company, Trustee, Complainant, v. The International and Great Northern Railway Company, John H. Reagan et al., Defendants. Motion to withdraw answers and file demurrer. Filed March 20, 1893. B. G. Duval, Clerk; By D. H. Hart, Deputy.

AUSTIN, TEXAS, March 23, 1893.

UNITED STATES CIRCUIT COURT.

Western District of Texas at Austin.

IN EQUITY.

ORIGINAL BILL.

189. Mercantile Trust Company, Trustee,

VS.

The Tyler Southeastern Railway Company et als.

CROSS BILL.

The Tyler Southeastern Railway Company,

VS.

The Mercantile Trust Company, John H. Reagan, et als.

ORIGINAL BILL.

188. The Mercantile Trust Company, Trustee,

VS.

The St. Louis Southwestern Ry. Co. of Texas et als.

CROSS BILL.

The St. Louis Southwestern Ry. Co. of Texas,

VS.

The Mercantile Trust Company; John H. Reagan, et als.

ORIGINAL BILL.

186. The Mercantile Trust Company, Trustee,

VS.

The Texas & Pacific Railway Co., John H. Reagan et als.

CROSS BILL.

The Texas & Pacific Railway Co.,

vs.

The Mercantile Trust Co., John H. Reagan et als.

ORIGINAL BILL.

190. The Farmers' Loan & Trust Co., Trustee.

vs.

The Gulf, Colorado & Santa Fe Ry. Co. et als.

CROSS BILL.

The Gulf, Colorado & Santa Fe Ry. Co.,

vs.

The Farmers' Loan & Trust Co., John H. Reagan et als.

ORIGINAL BILL.

187. The Farmers' Loan & Trust Co., Trustee,

vs.

The International & Great Northern Railroad Co. et als.

CROSS BILL.

The International & Great Northern Railroad Co.,

vs.

The Farmers' Loan & Trust Co., John H. Reagan et als.

These causes came on this day to be heard on the motions of defendants John H. Reagan, L. L. Foster, William P. McLean and Charles A. Culberson, for leave to withdraw their answers to the bills of complaint and and cross bills in the above entitled causes, and for leave to file demurrers to said bills and cross bills. Whereupon and on consideration whereof, complainants and cross complainants consenting to the granting of said

leave, subject to terms as hereinafter set forth, and said defendants not objecting to said terms:

It is ordered, adjudged and decreed that said defendants be and they are hereby allowed to withdraw their said answers to said bills and cross bills in said causes, and to file demurrers thereto upon the terms and conditions following, viz:

(1) That said defendants do pay all costs of taking testimony and depositions in said causes, against them to be taxed, and it is hereby ordered that execution do issue therefor.

(2) That said complainants and cross complainants be and they are hereby allowed to amend their respective bills and cross bills before said demurrers be filed, and in such manner as they may be advised.

March 23, 1893.

A. P. McCORMICK,
Judge.

By consent of all parties in the above causes, it is hereby ordered that the Exhibits marked "H" and "I" to the original bills and cross bills, shall be made a part of the records in these causes, the originals, without copying the same, to accompany the records as a part of the same to the Supreme Court of the United States.

March 23, 1893.

A. P. McCORMICK,
Circuit Judge.

Farmers Loan & Trust Company, Trustee,

vs.

The International & Great Northern Railroad Company, John H. Reagan et als.

Now comes complainant and sets down the above cause for hearing on Bill and Answer as to the defendant, The International & Great Northern Railroad Company.

March 23, 1893.

Attest: B. G. DUVAL, *Clerk.*
By D. H. HART, *Deputy.*

IN THE

UNITED STATES CIRCUIT COURT.

For the Western Dtstrict of Texas, at Austin.

IN EQUITY. No. 187.

THE FARMERS LOAN AND TRUST COMPANNY,

TRUSTEE, COMPLAINANT.

Against

THE INTERNATIONAL & GREAT NORTHER R'Y. CO., JOHN H. REAGAN ET AL., DEFENDANTS.

The Demurrer of John H. Reagan, W. P. McLean, L. L. Foster and C. A. Culberson to Complainant's bill as amended.

These defendants, by way of protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner and form as the same are herein set forth and alleged, demur to the bill of complaint and for causes of demurrer show:

That said complainant hath not in and by said bill, made or stated such a cause of action as doth or ought to entitle it to any such relief as is thereby sought and prayed for against these defendants. Wherefore, these defendants pray judgment of this Honorable Court whether they shall be compelled to further answer and pray to be dismissed with their costs.

And for specific causes of demurrer to the sufficiency of the various allegations of the said bill, defendants say:

1. That it does not appear from the allegations of said bill that the complainants have any interest in the subject matter of the complaint and in equity can not demand the relief sought in the prayer of said bill. Because the

injury complained of is too remote, and the bill shows no legal damage to complainant, because the relief asked by complainant in effect deprives the Railway Comyany of the management of its own affairs and substitutes the judgment of the Court for that of the directory of the Railway Company.

2. Because it appeareth from the face of said bill that complainants have a plain and adequate remedy at law.

3. Because it appeareth from the face of the bill of complaint that the suit is against the State of Texas and consequently obnoxious to the 11th amendment of the Constitution of the United States.

4. Because it appeareth from the face of the bill of complaint that complainant seeks to enjoin the judgment of a special tribunal of the State of Texas, said tribunal having jurisdiction under the constitution and laws of Texas to try and determine the special matters sought to be enjoined, and from which judgment a plain and adequate remedy by appeal had been granted to all parties interested by the laws of Texas.

5. Because it appears from the bill that complainants seek to stay judicial proceedings when necessary to be brought under the laws and in the name of the State of Texas in the courts of Texas.

6. Because it appears upon the face of said bill that the complainant seeks to enjoin the Attorney-General of the State of Texas from bringing any action or enforcing penalties against the defendant railway company, provided by law to enforce obedience upon the part of the defendant company to the laws of the State of Texas.

7. because it appears from the face of the bill that section 5, of the Act of the State of Texas, known as the Railroad Commission Act and set forth in the bill, of which complainant complains as unconstitutional because depriving it of due process of law, is not obnoxious as alleged to the fourteenth amendment to the Constitution of the United States, but that the said section taken in connection with other sections of the said Railroad Commission Act is a valid provision and constitutional.

8. Because it appears from the face of the bill that section 5 of the Railroad Commission Act, if obnoxious to the Constitution of the United States, does not affect the law as a whole and said Commission law is valid and constitutional though section 5 be declared unconstitu-

tional and void, and the relief prayed for by complainant to enjoin the Railroad Commission of the State of Texas from ever hereafter making any rates or issuing or delivering any further tariffs, orders or circulars or the relief sought by complainant's bill enjoining all persons hereafter from claiming any right under said law, can not in equity be granted by this court.

9. Because it appears that the Commission law, as set forth in complainant's bill and upon the invalidity of which the whole of the relief asked by complainant is based, is a valid and constitutional law and the court has no jurisdiction in this case because the law being constitutional, no Federal question is involved nor does it appear that said cause arises under the constitution or any law of the United States.

10. Because it appears from the bill that the allegations of the unreasonableness of rates fixed by the State Commission and of which it complains and seeks relief by injunction is based upon the operating expenses, the interest on the bonded indebtedness and the stock issue of the defendant railway, which complainant alleges the defendant railway should be permitted to earn. That said allegation setting up said claim as a basis of the reasonableness of the rate is insufficient in equity upon which to grant the relief prayed for.

11. That to so much of the allegation of complainant's bill as sets up the individuality of Circular 34, issued by the Railroad Commission of the State of Texas, which is made a partof said bill, defendants say the same is insufficient in that it does not show that the requirements contained in said circular are unreasonable regulations imposed on defendant company. Nor does it interfere with interstate commorce as alleged.

12. That so much of the allegations in complainant's bill as seek to attack the validity of the law creating the Railroad Commission and prescribing its powers because of combining judicial legislation and executive powers, are insufficient in law or equity upon which to base the relief prayed for.

13. The defendants further demurring, say that this Court has no jurisdiction because it appears from the bill and the cross bill and record generally, that there is a fraudulent combination between complainant and the defendant railroad company to obtain jurisdiction in this

Court by creating a diversity of citizenship in order that the defendant company, which is a domestic corporation chartered under the laws of Texas, should be enabled to apply for affirmative relief by means of the cross bill filed by it against these defendants.

14. Defendants further demurring say that so much of said bill as sets up want of notice of the time and place of fixing rates by the Railroad Commission of Texas, is insufficient in law or equity, because it appears by the bill that a notice was given before fixing rates and that defendant railroad company did appear both by the traffic agent and counsel and discuss the rates prior to their being fixed by the Commission. And further demurring, defendants say that the want of notice complained of is under a law of the State of Texas and no federal question arises giving this Court jurisdiction to determine its sufficiency.

15. Defendants further demurring, say that so much of complainant's bill as sets up that the Commission law of Texas is obnoxious to the 14th amendment in not providing due process of law or in depriving the defendant railroad company of the equal protection of the law, is insufficient in this, that said objections are not shown by any allegation in said bill to appear upon the face of the law complained of by said complainant and there exists no federal question arising upon the face of said law by which this Court can take jurisdiction.

Wherefore, and for divers other errors and imperfections appearing in the said bill of complaint, the defendants pray the judgment of the Court whether they shall be compelled to make answer to such points of said bill as are herein specifically demurred to and prays to be dismissed with their costs in this behalf expended.

C. A. CULBERSON,
H. C. COKE,
W. S. SIMPKINS,
Solicitors for Said Defendants.

I, C. A. Culberson, counsel for the defendants in the above cause, do hereby certify that the foregoing demurrer to the bill of complaint is in my opinion well founded in law.

C. A. CULBERSON.

UNITED STATES OF AMERICA,
WESTERN DISTRICT OF TEXAS.

I, C. A. Culberson, one of the defendants in the above cause, being duly sworn, do say that the foregoing dmurrer to the bill of complaint is not interposed for purposes of delay.

C. A. CULBERSON.

Subscribed and sworn to before me, this the 23rd day of March, 1893.

B. G. DUVAL, *Clerk*.
By D. H. HART, *Deputy*.

No. 187. (Endersed.)

In the United States Circuit Court for the Western District of Texas, at Austin. The Farmers' Loan & Trust Company, Trustee, complainants, vs. The International & Great Northern Railroad Company, John H. Reagan et als., defendants. The demurrer of John H. Reagan, W. P. McLean, L. L. Foster and C. A. Culberson. Filed March 23, 1893. B. G. Duval, Clerk, By D. H. Hart, Deputy.

IN THE UNITED STATES CIRCUIT COURT.

For the Wester District of Texas, at Austin.

IN EQUITY. No. 187.

The International & Great Northern Railway Company, *Cross Complainant.*

vs.

The Farmers' Loan & Trust Company, John H. Reagan et als., *Defendants.*

The demurrer of John H. Reagan, W. P. McLean, L. L. Foster and C. A. Culberson to the cross bill of above named cross complainant as amended.

These defendants, by way of protestation, not confessing or acknowledging all or any of the matters and things in the said cross bill of said cross complainant contained to be true in such manner and form as the same are therein set forth and alleged, demur to the said cross bill and for causes of demurrer show:

That said cross complainant hath not in and by said bill made or stated such a cause of action as doth or ought to entitle it to any such relief as is thereby sought and prayed for against these defendants. Wherefore, these defendants pray judgment of this Honorable Court whether they shall be compelled to further answer, and pray to be dismissed with their costs.

And for specific causes of demurrer to the sufficiency of the various allegations of said cross bill, defendants say:

1. That it appears from the allegations of the original bill in this cause that the same cannot be maintained, and said original bill falling, said cross bill must fall with it. The cross bill cannot be maintained without the main bill to support it.

2. For further grounds of special demurrer to said cross bill, defendants adopt the special demurrers inter-

posed by them in this cause to the original bill, numbered from two to fifteen, inclusive.

Wherefore, and for divers other errors and imperfections appearing in the said bill of complaint, defendants pray the judgment of the Court whether they shall be compelled to make answer to such parts of said cross bill as are herein specifically demurred to, and pray to be dismissed with their costs in this behalf expended.

C. A. CULBERSON,
H. C. COKE,
W. S. SIMKINS,
Solicitors for Said Defendants.

I, C. A. Culberson, counsel for the defendants in the above cause, do hereby certify that the foregoing demurrer to the bill of complaint is in my opinion well founded in law.

C. A. CULBERSON.

UNITED STATES OF AMERICA, (
Wester District of Texas. (I, C. A. Culberson, one of the defendants in the above cause, being duly sworn, do say that the foregoing demurrer to the bill of complaint is not interposed for purposes of delay.

C. A. CULBERSON.

Subscribed and sworn to before me this the 23d day of March, 1893.

B. G. DUVAL, *Clerk.*
By D. H. HART, *Deputy.*

(Endorsed). No. 187. In the United States Circuit Court for the Western District of Texas, at Austin. The International and Great Northern Railway Company, cross complainant, against the Farmers' Loan and Trust Company, John H. Reagan et al., defendants. The demurrer of John H. Reagan, W. P. McLean, L. L. Foster and C. A. Culberson to the cross bill. Filed March 23, 1893. B. G. Duval, Clerk; By D. H. Hart, Deputy.

Farmers' Loan & Trust Company, Trustee,

vs.

International & Great Northern Railroad Company, John H. Reagan et als.

Now comes complainant through Messrs. Farrar, Jonas & Kruttschnitt, its solicitors, and with leave of the Court, files its amended bill of complaint herein.

March 23, 1893.

Attest:

B. G. Duval, *Clerk*.
By D. H. HART, *Deputy*.

CROSS BILL.

International & Great Northern Railroad Company,

vs.

Farmers' Loan & Trust Company, John H. Reagan et als.

Now comes cross-complainant the International & Great Northern Railroad Company, through Messrs. R. S. Lovett and T. J. Freeman, its solicitors, and with leave of the Court files its amended bill herein.

March 23, 1893.

Attest:

B. G. DUVAL, *Clerk*.
By D. H. HART, *Deputy*.

Farmers Loan & Trust Company, Trustee,

vs.

The International & Great Northern Railroad Company, John H. Reagan et als.

Now comes the defendants J. H. Reagan, W. P. McLean, L. L. Foster and C. A. Culberson, by their solicitors, Messrs. C. A. Culberson, C. H. Coke and W. S.

Simkins, and with leave of the Court file their demurrer to complainant's bill as amended.

March 23, 1893.

Attest:

B. G. DUVAL, *Clerk.*
By D. H. HART, *Deputy*

CROSS BILL.

International & Great Northern Railroad Company,

vs.

Farmers' Loan & Trust Company, John H. Reagan et als.

Now comes defendants, John H. Reagan, W. P. McLean, L. L. Foster and C. A. Culberson, by their solicitors Messrs. C. A. Culberson, H. C. Coke and W. S. Simkins, and with leave of Court file their demurrer to cross bill of above named cross complainant as amended.

March 23, 1893.

Attest:

B. G. DUVAL, *Clerk.*
By D. H. HART, *Deputy.*

EQUITY.

Farmers' Loan & Trust Company, Trustee,

vs.

International & Great Northern Railroad Company, John H. Reagan et als.

Now comes complainant through Messrs. Farrar, Jonas & Kruttschhnitt, its solicitors, and sets down the demurrer of defendants John H. Reagan, L. L. Foster, William P. McLean and Charles A. Culberson to be argued.

March 23, 1893.

Attest:

B. G. DUVAL, *Clerk.*
By D. H. HART, *Deputy.*

CROSS BILL.

International & Great Northern Railroad Company,

vs.

Farmers' Loan and Trust Co., John H. Reagan et als.

Now comes cross complainant, the International & Great Northern Railroad Company, through R. S. Lovett, Esq., its solicitor of record, and sets down the demurrer of John H. Reagan, William P. McLean, L. L. Foster and Charles A. Culberson, to the cross bill herein for argument.

March 23, 1893.

Attest: B. G. DUVAL, *Clerk.*
By D. H. HART, *Deputy.*

ORIGINAL BILL.

The Farmers' Loan & Trust Company, Trustee,

vs.

The International & Great Northern Railroad Company, John H. Reagan et als.

CROSS BILL.

The International & Great Northern Railroad Company,

vs.

The Farmers' Loan & Trust Co., John H. Reagan, et als.

Now comes complainant, and moves the Court for leave to dismiss its bill of complaint as to defendant, Thomas M. Campbell.

Whereupon it is ordered by the Court that said bill be dismissed as to said Thomas M. Campbell, at cost of complainant.

March 23, 1893.

A. P. McCORMICK,
Circuit Judge.

(Endorsed). No. 187. U. S. Circuit Court, Western District of Texas, at Austin. The Farmers' Loan & Trust Company vs. the International & Great Northern Railroad Company et als. The International & Great Northern Railroad Company vs. The Farmers' Loan and Trust Company, John H. Reagan et als. Motion and order dismissing bill as to Thomas M. Campbell. Filed and entered March 23, 1893. B. G. Duval, Clerk; By D. H. Hart, Deputy.

Farmers' Loan & Trust Company, Trustee.

vs.

The International & Great Northern Railroad Company, John H. Reagan et als.

Now comes Defendants John H. Reagan, William P. McLean, L. L. Foster and Charles A. Culberson, through Charles A. Culberson, their solicitor of record herein, and decline further to answer the bill of complaint as amended, or cross bill as amended in the above cause, stand upon their demurrers and submit said cause to the Court for a final decree.

March 23, 1893.

Attest: B. G. DUVAL, *Clerk.*
By D. H. HART, *Deputy.*

IN THE
CIRCUIT COURT OF THE UNITED STATES.

Fifth Circuit, Western District of Texas.

IN EQUITY, NO. 187

ORIGINAL BILL.

The Farmers Loan and Trust Company, Trustee, *Complainants.*

vs.

The International & Great Northern Railroad Co. and John H. Reagan *et al.*, *Defendants.*

CROSS BILL.

The International & Great Northern Railroad Co., *Complainants.*

vs.

The Farmers Loan and Trust Co., Trustee, and John H. Reagan *et al.*, *Defendants.*

FINAL DECREE.

This cause having been set down for final hearing on the pleadings and evidence, and being called for hearing thereon, the defendants, John H. Reagan, Wm. P. McLean, L. L. Foster and Charles A. Culberson presented their motion, on file herein, for leave to withdraw their answers and file demurrers, which motion was granted conditioned upon the said defendants paying all costs of taking depositions and evidence, herein against them to be taxed, and for which execution may issue, and on condition that the complainant and cross-plainant have leave to amend before the filing of the demurrers of the said defendants, which leave was granted, and whereupon said amendments were filed, and the demurrers of the

said defendants were filed to the original bill of complaint and cross-bill in this cause, as also to all amendments thereto, and were, by complainant and cross-complainant, set down for argument by consent, and were, by all parties, forthwith submitted; and thereupon, in consideration thereof, it was ordered, adjudged and decreed that said demurrers be, and the same are hereby overruled; and the defendants, John H. Reagan, Wm. P. McLean, L. L. Foster and Charles A. Culberson, having entered of record their refusal to make further answer, and the fact that they stood upon their demurrers, and all parties submitting the cause for final decree, it is now, upon consideration thereof, ordered, adjudged and decreed that the bill of complaint as amended, and the cross-bill of complaint as amended, in the above entitled cause, be, and the same are hereby sustained and taken for confessed. And the said cause coming on further to be heard upon the bill of complaint herein as amended, and upon the answer of the defendant railroad company thereto confessing the same, it is further ordered, adjudged and decreed as follows, to-wit:

First.—That the injunctions heretofore issued in this cause be, and the same are hereby made perpetual, and accordingly.

Second.—That defendant, the International & Great Northern Railroad Company be, and it is hereby perpetually enjoined, restrained and prohibited from putting or continuing in effect, the rates, tariffs, circulars or orders of the Railroad Commission of Texas, or either or any of them as described in the bill of complaint herein, and in "Exhibit C" thereto and therewith filed, and from charging or continuing to charge the rates specified in said tariffs, circulars or orders, or either or any of them.

Third.—It is further ordered, adjudged and decreed that the defendants, the Railroad Commission of Texas, and the defendants, John H. Reagan, Wm. P. McLean and L. L. Foster, acting as the Railroad Commission of Texas, and their successors in office, and the defendant, Charles A. Culberson, acting as attorney general of the State of Texas, and his successors in office be, and they are hereby perpetually enjoined, restrained and prohibited from instituting or authorizing or directing any suit or suits, action or actions against the defendant railroad company for the recovery of any penalties under and by

virtue of the provisions of the act of the legislature of the State of Texas, approved April 3rd, 1891, and fully described in the bill of complaint; or under or by virtue of any of the said tariffs, orders or circulars of the said Railroad Commission of Texas, or any or either of them, or under or by virtue of the said act and the said tariffs, orders or circulars of said Railroad Commission, or any or either of them combined, and said defendants, Reagan, McLean and Foster and the Railroad Commission of Texas are further perpetually restrained from certifying any copy or copies of any of said orders, tariffs or circulars, or from delivering, or causing or permitting to be delivered certified copies of any of said orders, tariffs or circulars to the said Culberson or any other party, and from furnishing the said Culberson, or any other party, any information of any character for the purpose of inducing, enabling or aiding him or any other party to institute or prosecute any suit or suits against the said defendant railroad company for the recovery of any penalty or penalties under the said act.

Fourth.—It is further ordered, adjudged and decreed that the said Railroad Commission of Texas, and the said Reagan, McLean and Foster be perpetually enjoined restrained and prohibited from making, issuing or delivering to the said railroad company, or causing to be made, issued or delivered to it, any further tariff or tariffs, circular or circulars, order or orders.

Fifth.—It is further ordered, adjudged and decreed that all other individuals, persons or corporations be, and they are hereby perpetually enjoined, restrained and prohibited from instituting or prosecuting any suit or suits against the said railroad company for the recovery of any damages, overcharges, penalty or penalties under or by virtue of the said act or any of its provisions, or under and by virtue of the said tariffs, orders or circulars of the said Railroad Commission of Texas, or any or either of them, or under and by virtue of the said act and the said traiffs, orders and circulars, or any or either of them combined.

Sixth.—It is further ordered, adjudged and decreed that all rates, tariffs, circulars and orders heretofore made and issued by said Commission, and fully described in "Exhibit C" to the bill of complaint herein be, and they are hereby declared to be unreasonable, unfair and

unjust as to complainant and cross-complainant, and they are hereby cancelled and declared to be null, void and of no effect.

Seventh.—It is further ordered, adjudged and decreed that all costs herein be taxed against said defendants, Reagan, McLean, Culberson and Foster and the Railroad Commission of Texas, and that execution may issue therefor.

Austin, Texas, March 23, 1893.

A. P. McCORMICK,
Circuit Judge.

No. 187.

The Farmers' Loan & Trust Company, *Complainant.*

vs.

The International & Great Northern Railway Company, John H. Reagan et al., *Defendants.*

IN THE UNITED STATES CIRCUIT COURT.

For the Western District of Texas. At Austin.

Your petitioners, John H. Reagan, W. P. McLean, L. L. Foster and C. A. Culberson, defendants in the above entitled cause, would respectfully represent and show that in said cause pending in the United States Circuit Court in and for the Western District of Texas at Austin, there was entered on the 23d day of March, 1893, in said court, a final decree to the prejudice and injury of your petitioners, which said decree is erroneous and inequitable in many particulars.

WHEREFORE, In order that your petitioners may obtain relief in the premises and have opportunity to show the errors complained of, petitioners pray that they be allowed an appeal in said cause to the Supreme Court of the United, and that the proper orders touching the security required of them, if any, may be made.

C. A. CULBERSON,
H. C. COKE,
W. S. SIMKINS,
Solicitors for Defendants.

The above application for appeal to the Supreme Court of the United States is on this day, to-wit: March 23, 1893, allowed as prayed for upon said defendants entering into bond within the time and conditioned as the law requires in the sum of $500, payable to complainant and cross complainant.

A. P. McCORMICK,
Circuit Judge.

(Endorsed). No. 187. The Farmers' Loan & Trust Company, Trustee, Complainant, vs. The International & Great Northern Railway Company, John H. Reagan et al., Defendants. Application for an appeal. Filed March 23, 1893. B. G. Duval, Clerk, By D. H. Hart, Deputy.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA.

For the Western District of Texas, in the 5th Circuit.

The Farmers' Loan & Trust Company, Trustee,
Complainant,

vs.

The International & Great Northern Railroad Company, John H. Reagan et al., *Defendants.*

The International & Great Northern Railroad Company,
Cross Complainant.

vs.

The Farmers' Loan & Trust Company, Trustee, John H. Reagan et al., *Defendants.*

Know all men by these presents that we, John H. Reagan, W. P. McLean, L. L. Foster and C. A. Culberson, of the city of Austin, Travis county, Texas, and John H.

Gaston, of the city of Dallas, in Dallas county, are held and firmly bound unto the above named Farmers' Loan & Trust Company and International & Great Northern Railroad Company, in the sum of five hundred dollars ($500), to be paid to the said Farmers' Loan & Trust Company and International & Great Northern Railroad Company, for the payment of which, well and truly to be made, we bind ourselves and each of us, and our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the 27th day of March, in the year of our Lord eighteen hundred and ninety-three. Whereas, the above named John H. Reagan, W. P. McLean, L. L. Foster and C. A. Culberson, have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in above entitled suit on March 23, 1893, by the Judge of the Circuit Court of the United States for the Western District of Texas.

Now, therefore the condition of this obligation is such, that if the above named John H. Reagan, W. P. McLean, L. L. Foster and C. A. Culberson, shall prosecute said appeal to effect, and answer all damages and costs if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOHN H. REAGAN. (seal)
W. P. McLEAN. (seal)
L. L. FOSTER. (seal)
C. A. CULBERSON. (seal)
By W. S. SIMKINS AND HENRY C. COKE.
their Solicitors.
JOHN H. GASTON. (seal)

Sealed and delivered, and taken and acknowledged, this 27th day of March, 1893, before me,

CHAS. H. LEDNUM,
U. S. Commissioner.

Approved by
A. P. McCORMICK,
Circuit Judge.

(Endorsed). No. 187. The Farmers' Loan & Trust Company, Trustee, Complainant vs. The International &

Great Northern R. R. Co., John H. Reagan et als., defendants. The I. & G. N. Ry. Co., cross-complainant, vs. The Farmers' Loan & Trust Co., Trustee, John H. Reagan et als., defendants. Bond for appeal.

Filed March 29, 1893.

B. G. DUVAL, *Clerk*,
By D. H. HART, *Deputy*.

EXHIBIT "H."

ANNUAL REPORT

OF THE

INTERNATIONAL & GREAT NORTHERN RAILROAD

TO THE

RAILROAD COMMISSIONERS

OF THE

STATE OF TEXAS

FOR THE YEAR ENDING JUNE 30, 1892.

Filed March 23, 1893.

B. G. DUVAL, *Clerk.*
By D. H. HART, *Deputy.*

NOTE.

This Form should be filled out and returned to the Office of the Railroad Commissioners, Austin, Texas, by September 15, 1892. It will be observed that on each left-hand page Instructions are printed for answering the questions asked on pages opposite.

Provision is made in the Form for two classes of railway companies, namely: Operating companies and Subsidiary companies.

By an Operating company is to be understood one whose officers direct the business of transportation, and whose books contain operating accounts as well as financial accounts. A report from such a company is termed an *Operating Report*. The pages of the Form designed for the exclusive use of such companies are Nos. 9, 11 [upper part], 25—"B," 27, 31, 35, 43, 45, 61, 63, 65, 68—"A" and "B—1," 71 [lower part], and 73.

By a Subsidiary company is to be understood one which, although merged in an operating system by means of a lease, or by means of an operating contract or agreement, yet maintains an independent legal existence and separate financial accounts. The report which such a company makes to this Office is termed a *Financial Report*. The pages of the Form designed for the exclusive use of such companies are Nos. 13 and 33; but see, also, the next paragraph.

The other pages of the Form, not specified above, may be filled out by *either class* of companies, according as there is any information to be returned to the questions asked.

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

(2)

There should appear on the opposite page *some notation* to indicate that the questions asked have not been overlooked. The word "None" may be used against any particular item or items, where that word expresses the *facts*. In other cases, refer by note to *this* page, as for example, "See page 2," where a brief explanation should be given why specific data called for cannot be returned *exactly as requested*.

Answers to the questions asked should be in full, *without reference to data returned on corresponding page of previous reports*. In case any changes of the nature referred to under Questions 4, 5, or 6, on opposite page, have taken place during the year covered by this report, they should be explained in detail on page 53 of this Form.

1. If the report is made by receivers, trustees, committees of bondholders, or individuals otherwise in possession of the property, state names and facts with precision, first giving the name of the corporation holding the franchise under which the operations are carried on.

2. If incorporated under a special charter, give date of passage of the act; if under a general law, give date of filing certificate of organization; if a reorganization has been effected, give date of reorganization. If a receivership or other trust, give date when such receivership or other possession began. If a partnership, give date of formation and give names of present partners in full.

3. Give reference to laws of each State or Territory under which organized. Include any grant of corporate powers by the United States, Canada, or other foreign country; also all amendments to charter.

4. Give reference to special or general laws under which each consolidation was effected. Specify Government, State, or Territory under which each company now consolidated with present company was organized; give reference to charters of each and all amendments of same. Cases of practical consolidation or merger, effected by ownership or control of capital stock, or by leases of long duration when the lessor company does not keep up an independent organization for the purpose of distributing income, or otherwise accomplished in such manner that no distinction is made in operating or in accounting by reason of the original separate incorporation, may be treated as consolidations in fact, and should be stated and explained in answer to this and the next following inquiry.

5. State the occasion for the reorganization, whether by reason of foreclosure of mortgage, or otherwise, according to the fact. Give date of organization of original corporation and refer to laws under which organized.

6. This inquiry is to be answered only by companies which maintain an organization for the purpose of distribution of rentals received, and which make no report except a financial report as a subsidiary company.

EXPLANATORY REMARKS.

On July 11, 1892, the International and Great Northern R. R. was taken out of the hands of the Receiver and turned over to the stockholders, who are now operating the Road.

T. M. Campbell was relieved as Receiver and was appointed General Manager.

HISTORY.

(3)

1. Name of common carrier making this report? T. M. Campbell, Receiver of the International and Great Northern Railroad.

2. Date of organization? Receivership, February 20th, 1889.

3. Under laws of what government, State, or Territory organized? If more than one, name all; give reference to each statute and all amendments thereof. Laws of the State of Texas.

4. If a consolidated company, name the constituent companies. Give reference to charters of each, and all amendments of same. International Railroad Co, chartered August 5th, 1870, and Houston and Great Northern Railroad Co, chartered October 22d, 1866, consolidated under the name of International and Great Northern Railroad Co.

On May 3rd, 1873, the Houston Tap and Brazoria Railway, Huntsville Branch and the Victoria and Columbia Railroad were consolidated with the Houston and Great Northern Railroad.

5. Date and authority for each consolidation? The consolidation of the International Railroad Co. with the Houston and Great Northern Railroad Company was dated September 25rd, 1873, and recognized by the State of Texas, April 24th, 1874, and again March 10th, 1875.

6. If a reorganized company, give name of original corporation, and refer to laws under which it was organized. The International and Great Northern Railroad Co. was reorganized November 1st, 1879.

7. [For companies not making operating reports.] What carrier operates the road of this company.

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

(4)

There should appear on the opposite page *some notation* to indicate that the questions asked have not been overlooked. The word "None" may be used under any column heading; or against any particular item or items, where that word expresses the *facts*. In other cases, refer by note to *this* page, as for example, "See page 4," where a brief explanation should be given why specific data called for cannot be returned *exactly as requested*.

EXPLANATORY REMARKS.

ORGANIZATION. (5)

NAMES OF DIRECTORS.	POST OFFICE ADDRESS.	DATE OF EXPIRATION OF TERM.
Jay Gould	New York	April 4th, 1893
Geo. J. Gould	New York	April 4th, 1893
Howard Gould	New York	April 4th, 1893
S. H. H. Clark	St. Louis, Mo.	April 4th, 1893
James H. Baker	Houston, Texas	April 4th, 1893
F. A. Rice	Houston, Texas	April 4th, 1893
Ira H. Evans	Austin, Texas	April 4th, 1893
A. R. Howard	Palestine, Texas	April 4th, 1893
H. B. Kane	Palestine, Texas	April 4th, 1893

Total number of stockholders at date of last election? 20.
Date of last meeting of stockholders for election of directors? April 4, 1892.
Give post office address of general office. Palestine, Texas.
Give post office address of operating office. Palestine, Texas.

INSTRUCTIONS FOR ANSWERING QUESTIONS (6) ON OPPOSITE PAGE.

There should appear on the opposite page *some notation* to indicate that the questions asked have not been overlooked. The word "None" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the *facts*. In other cases, refer by note to *this* page, as for example, "See page 6," where a brief explanation should be given why specific data called for cannot be returned *exactly as requested*.

Give the names and post-office addresses of the various officers called for. If there are receivers, trustees, committees, or other officials not provided for in the list, and who are recognized as in the controlling management of the road or a department thereof, give also their names, titles, and the location of their offices. If the duties of an official extend to more than one department, or if his duties are not in accordance with the customary acceptance of his given title, state briefly the facts.

EXPLANATORY REMARKS.

On July 11th, 1892, the International and Great Northern Railroad was turned over to the stockholders who are now operating the Road. T. M. Campbell was relieved as Receiver and appointed General Manager.

OFFICERS. (7)

TITLE.	NAME.	LOCATION OF OFFICE.
Chairman of the Board		
Receiver	T. M. Campbell	Palestine, Texas
President	Jay Gould	New York, N. Y.
First Vice-President	S. H. H. Clark	St. Louis, Mo
Second Vice-President	H. B. Kane	Palestine, Texas
Third Vice-President		
Secretary		
Treasurer	A. R. Howard	Palestine, Texas
Assistant Treasurer	H. B. Henson	New York
General Solicitor	A. G. Cochran	St. Louis, Mo.
General Attorney	John M. Duncan	Tyler, Texas
General Auditor	C. G. Warner	St. Louis, Mo.
Comptroller		
Assistant Comptroller		
Auditor	W. L. Maury	Palestine, Texas
Assistant Auditor		
General Manager	T. M. Campbell	Palestine, Texas
Assistant General Manager		
Resident Engineer	J. D. Trammell	Palestine, Texas
General Superintendent	T. G. Golden	" "
Asst. Gen'l Superintendent		
Division Superintendent		
Division Superintendent		
Division Superintendent		
Superintendent of Telegraph	T. W. Parks	Palestine, Texas
Traffic Manager		
Asst. Traffic Manager		
Gen'l Freight and Pass. Agt.	J. E. Galbraith	Palestine, Texas
Asst. Gen'l Freight Agent	J. B. Bartholomew	" "
General Passenger Agent		
Asst. Gen'l Passenger Agent	D. J. Price	Palestine, Texas
General Ticket Agent		
Asst. Gen'l Ticket Agent		
General Baggage Agent	W. J. Taylor	Palestine, Texas
Superintendent of Express		
Land Commissioner		

INSTRUCTIONS FOR ANSWERING QUESTIONS (8) ON OPPOSITE PAGE.

There should appear on the opposite page *some notation* to indicate that the questions asked have not been overlooked. The word "None" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the *facts*. In other cases, refer by note to *this* page, as for example, "See page 8," where a brief explanation should be given why specific data called for cannot be returned *exactly as requested*.

The mileage to be returned on the opposite page is the mileage, the operations of which are in the "Income Account," as returned on page 31 of this report. Should operations on any part of the mileage have been begun within the twelve months covered by this report, a full statement of facts should be furnished.

In giving the mileage, name the roads according to the *classification* and in the *order* indicated, and state the actual distance between terminals, *single track*, entering in the last column but one the mileage for each strip of road named, and in the last column the "Miles of line for each class of roads named."

Under "B," of this Table, the "Spurs" referred to should include only those *used for traffic purposes*, as for example, a spur running from main line to a quarry or factory. Spurs in the nature of sidings should be entered only on page 69, against the item "Miles of yard track and sidings," under Table "A."

By "Line operated under trackage rights" is meant such lines as are used in common with other companies by the company making report, but not owned by such company. Such lines constitute part of the line operated, but form no part of the property of the operating company. Roadway held in joint ownership may also be returned under this head, or the proportion of roadway so owned may be returned under "Main line owned;" but in either case full explanation must be given in order to avoid duplication of line.

In case any changes have taken place during the year covered by this report, either in the classification of line as given on opposite page, or in the length of line reported, such changes should be explained in full on page 53 of this Form.

EXPLANATORY REMARKS.

PROPERTY OPERATED. (9)

[FOR ROADS MAKING OPERATING REPORTS.]

NAME OF EVERY RAILROAD THE OPERATIONS OF WHICH ARE INCLUDED IN THE INCOME ACCOUNT—PAGE 31.

In giving roads below, observe the following classification and order:

1. Railroad Line represented by Capital Stock:
   A. Main Line.
   B. Branches and Spurs. [See "Instructions," page 8.]
2. Proprietary Companies whose entire Capital Stock is owned by this Company.
3. Line Operated under Lease for specified sum.
4. Line Operated under Contract, or where the Rent is contingent upon earnings or other considerations.
5. Line operated under trackage rights.

	NAME.	TERMINALS. FROM—	TERMINALS. TO—	Miles of Line for Each Road Named.	Miles of Line for Each Class of Roads Named.
A.	International & Grt. Northern	Longview	Laredo	406.30	
	" " " "	Palestine	Houston	150.70	
	" " " "	Troupe	Mineola	44.40	691.40
B.	Columbia Branch	Houston	Columbia	50.00	
	Huntsville R. R. Branch	Phelps	Huntsville	8.00	
	Georgetown " "	Round Rock	Georgetown	10.00	
	Henderson & Overton R. R.	Overton	Henderson	16.00	84.00
	Total carried forward				775.40

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

(10)

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Upper part of page:

See "Instruction," page 8.

Lower part of page:

This statement should specify any and all Government land grants, coal, or other business properties, as well as all canals, bridges, ferries, steamboats, or other instrumentalities of commerce, if any, the earnings, expenses, and other operations of which affect in any way the general balance sheet. This statement, together with the statement of railway line operated, should embrace the total of property covered by the capital of the company making report. In reporting earnings and expenses incident to such property, the rule adopted by the company for its own accounts may be followed; that is to say, the earnings and expenses incident to such property may be carried to the "Income Account," page 31 (or 33), *or* the profit and loss on such property may be carried directly to the "General Balance Sheet," pages 49 and 51, being returned there as a separate item under "Profit and Loss." In case, however, earnings and expenses incident to property described are carried to "Income Account," they should be reported on the lower half of page 41, under "Miscellaneous Income," to be then transferred to page 31 (or 33).

EXPLANATORY REMAKKS.

PROPERTY OPERATED—CONTINUED. (11)
[FOR ROADS MAKING OPERATING REPORTS.]

NAME.	TERMINALS.		Miles of Line for Each Road Named.	Miles of Line for Each Class of Roads Named.
	FROM—	TO—		
Total brought forward				775.40
Total mileage operated				775.40

Name of all Coal, Bridge, Canal, or Other Properties, the Earnings and Expenses of which affect the General Balance Sheet—Pages 49 and 51.

NAME.	CHARACTER OF BUSINESS.	TITLE. (Owned, Leased, etc.)	STATE OR TERRITORY.
None.			

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

(13)

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In giving "Miles of line," state actual distance between terminals, *single track*. In stating "Under what kind of contract operated," designate by a word or short phrase the nature of contract under which the mileage reported is operated, and refer by letter "A," "B," etc., to the explanation of the contract as given on page 15.

EXPLANATORY REMARKS.

PROPERTY LEASED, OR OTHERWISE ASSIGNED FOR OPERATION. (13)

[FOR ROADS NOT MAKING OPERATING REPORTS.]

Name of Railroad the Income of which from Lease, or from Other Assignment for Operation, is Included in the Income Account—Page 33.

NAME.	TERMINALS.		BY WHAT COMPANY OPERATED.	Under What Kind of Contract Operated.	MILES OF LINE.
	FROM—	TO—			
Total Mileage					

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

(14)

There should appear on the opposite page *some notation* to indicate that the question asked has not been overlooked. The word "None" may be used for a whole page; or against any particular item or items, where that word expresses the *facts*. In other cases, refer by note to *this* page, as for example, "See page 14," where a brief explanation should be given why specific data called for cannot be returned *exactly as requested*.

In complying with request on page 15, give the date when any lease, contract, operating agreement, or controlling relation (written or verbal) took effect; time for which the same is drawn; and concise, though "full," explanation of conditions. Where a road is controlled through ownership of a majority of its capital stock, the fact should be so stated, together with the date this took effect, if the latter can be given. This information should also be returned on opposite page for any Subsidiary company making an Operating Report.

EXPLANATORY REMARKS.

PROPERTY LEASED, OR OTHERWISE ASSIGNED FOR OPERATION—CONTINUED. (15)

[FOR ROADS NOT MAKING OPERATING REPORTS; OR SUBSIDIARY OPERATING ROADS.]

Give here a full explanation of the Contract existing between Road (or Roads) mentioned on page 13 and the Company by which it is operated. In the case of a Subsidiary company making an Operating Report, its mileage will of course appear on page 9.

(15)

PROPERTY LEASED, OR OTHERWISE ASSIGNED FOR OPERATION—CONTINUED

[FOR ROADS NOT MAKING OPERATING REPORTS; OR SUBSIDIARY OPERATING ROADS.]

Give here a full explanation of the Contract existing between Road (or Roads) mentioned on page 13 and the Company by which it is operated. In the case of a Subsidiary company making an Operating Report, its mileage will of course appear on page 9.

INSTRUCTIONS FOR ANSWERING QUESTIONS (16) ON OPPOSITE PAGE.

There should appear on the opposite page *some notation* to indicate that the questions asked have not been overlooked. The word "None" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the *facts*. In other cases, refer by note to *this* page, as for example, "See page 16," where a brief explanation should be given why specific data called for cannot be returned *exactly as requested*.

Upper part of page:

Opposite "Common" and "Preferred," give number of shares and par value of each class of stock authorized by charter, articles of association, or vote of stockholders, with the amount of each class issued and outstanding. If stock is commonly designated as "Guaranteed," insert that title in lieu of "Preferred." If payments have been made by way of calls upon authorized stock not yet actually issued, give the amount of such payments and state facts below on this page (16).

Lower part of page:

Under "Manner of payment for capital stock," two statements are desired: One for that portion of the stock issued during the year covered by the report, the other for the *total amount of stock issued*. In case the present management is unable to ascertain the consideration upon which stock was originally issued, the fact should be definitely stated.

After the line, "Issued for cash," give the actual amount of cash realized.

After line "Issued for construction," state the terms of the construction contract, so far as to show the consideration received for the stock; also all bonds and other consideration accompanying the same.

After the line "Issued for reorganization," state the terms of the reorganization contracts, so far as to show what securities or obligations were retired by or exchanged for the present stock, and the terms.

In respect to stock issued for other purposes, as for purchase of real estate, acquisition of other property, bonus on sale of bonds, etc., *particulars* should be given, showing the precise equivalent received by the company. The statements on the lower half of page 17 may be given concisely, but it is expected that full explanations of all changes in stocks will be made on page 53 of this form.

Stock of leased lines should be stated by each company for itself, but stock of companies which make no financial report may be included among the stocks of the reporting company.

EXPLANATORY REMARKS.

CAPITAL STOCK. (17)

DESCRIPTION.	No. of Shares authorized.	Par Value of Shares.	Total Par Value authorized	Total Amount Issued and Outstanding.	DIVIDENDS DECLARED DURING YEAR	
					RATE.	AMOUNT.
Capital Stock: Common	97,550	$100 00	$5,500,000.00 For reorganization, $20,000 per mile for road acquired after.	$9,755,000.00	None	None.
Preferred						
Total						

MANNER OF PAYMENT FOR CAPITAL STOCK.	No. of Shares Issued During Year.	Cash Realized on Am't Issued During Year.	Total No. of Shares Issued.	Total Cash Realized.	REMARKS.
Issued for Cash: Common	None.	None.	None.	None.	
Preferred					
Issued for Construction: Common			42,550		
Preferred	None.	None.			
Issued for Reorganization: Common			55,000		
Preferred					
Issued for	None.	None.			
Total			97,550		

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

(18)

There should appear on the opposite page *some notation* to indicate that the questions asked have not been overlooked. The word "None" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the *facts*. In other cases, refer by note to *this* page, as for example, "See page 18," where a brief explanation should be given why specific data called for cannot be returned *exactly as requested*.

In making return of "Funded Debt," the following classification and order should be observed:

1. *Mortgage Bonds:* This class of debt to be understood as that which is secured by a lien on the road and its franchises.

2. *Miscellaneous Obligations:* This class of debt to cover all other so-called funded obligations which are understood to be liens on property specified, and, therefore, distinct from liens on the road and its franchises, such as Collateral Trust Bonds. Real estate mortgages should be returned under this heading, but "Equipment Trust Obligations" are to be returned separately on page 21.

3. *Income Bonds.* Under "Income Bonds" should be given all bonds which are a lien on revenue alone, or bonds which, being a lien on the road and its franchises, can claim payments of interest only in case interest is earned. The characteristic feature of an income bond is that interest payments are contingent upon earnings, failure to pay which cannot be made an occasion of foreclosure.

Entries under *each one* of the *three classes* of Bonds or Obligations above mentioned, should be *separately totalized*, these three sets of *totals* to be further added returned opposite "Grand Total."

Bonds belonging to sinking funds are to be treated as outstanding.

Under caption "Cash realized on amount issued," state the net amount of money which actually accrued to the company upon the negotiation of the securities. In case the present management is unable to ascertain the consideration upon which bonds were originally issued, *the fact should be definitely stated;* but the *cash realized on the issues of the year* should be given. In case of bonds issued for reorganization, or for other purposes than for cash or its equivalent, the fact should be stated and a full explanation accompany the report.

Under "Interest—When payable," give the dates on which coupons fall due.

Under "Amount *accrued* during year," give the aggregate of the monthly charges for the proportion of interest which has *accrued* on the total indebtedness, whether the same has matured or not during the period covered by this report; *but* interest which accrued previous to the date beginning the year covered by this report, although it may have matured within the year, should not be included in the "Amount accrued during year."

Under "Amount *paid* during year," give actual amount of coupons retired and canceled, or the amount covered by actual deposit of cash for payment.

In case any changes have taken place in the amount or character of "Funded Debt" during the year covered by this report, such changes should be explained in detail on page 53 of this Form.

EXPLANATORY REMARKS.

The outstanding $85,500.00 are Second Mortgage Gold Bonds, held by the Farmers' Loan and Trust Company for redemption of $85,000.00 of Purchase Money Second Mortgage Bonds of issue September 1st, 1879.

$698,572.50 interest of First Mortgage Bonds paid during the year, was paid in certificates as per plan of reorgrnization.

FUNDED DEBT. (19)

MORTGAGE BONDS, MISCELLANEOUS OBLIGATIONS, AND INCOME BONDS.

CLASS OF BOND OR OBLIGATION.	TIME.		Amount of Authorized Issue.	Amount Issued.	Amount Outstanding.	Cash Realized on Amount Issued.	INTEREST.			
	DATE OF ISSUE.	When due.					Rate.	When Payable.	Amount accrued during Year.	Amount Paid During Year.
First Mtge. Gold	Nov. 1st, 1879.	Nov. 1st, 1919.	$7,954,000 For reorganization & $10,000 per mile for acquired Road.	$7,954,000	$ 7,954,000	None.	6per ct.	May & Nov.	$ 477,240.00	$ 1,622,220.00
2nd Mtge. Gold	June 15, 1881.	1919.	$7,954,000	$6,968,500	6,968,500	None.	1 mo. 6 pr. ct. 11 mo. 4½ pr ct.	Mar & Sept.	322,293.13	329,430.09
2nd Mtge. Gold, in hands of trustee for redemption of purchase money 2nd Mtg. Income Bonds				85,500	85,500	None.	1mo. 6pr. ct. 11 mo. 4½	Mar. & Sept.	3,954.37	
Grand Total				15,008,000	15,008,000				803,487.50	1,951,650.09

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

(20)

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It is intended that "Equipment Trust Obligations" shall cover all debt contracted for the equipment of a road for which ordinary bonds are not issued, and in case a debt of this nature exists that cannot be reported according to the table in the Form, give details respecting it in as clear a manner as possible. The important facts to be known are—the "Original amount" and the "Amount outstanding" on June 30, of "Principal" and "Interest," *separately stated;* the "Amount paid during year," of "Interest;" and the "Equipment covered" by the debt.

Payments to companies furnishing equipment under the form of "Equipment Trust Obligations" should be returned on page 21 and *not* on page 47 of this Form, which is designed for payments for rents of property of the ordinary sort.

Table "A:" Under "Series or other designation," give the name or letter, or other designation by which the debt is known on the books of the company, the same designation appearing, and in the same order, in the corresponding column of Table "B." By "Term" is to be understood the number of years for which the obligation was drawn to run, while "Number of payments" calls for the total number of payments required for the final extinction of the obligation. Under "Equipment covered," state in detail the kind and number of cars or locomotives procured by the issue of the series named. Under "Remarks," state the nature of the guarantee for equipment furnished, as also any fact peculiar to the debt in question.

Table "B:" Of the total amount that must be paid before the equipment covered by any particular series becomes the property of the company, one portion is assigned to the payment of "Principal," and the other to the payment of the "Interest" accruing on that principal. Both are called "Deferred payments," and should be *separately reported*. Thus under "Deferred payments—Interest," "Original amount," should be given the total amount it was agreed to pay as interest when the series was issued, and under "Amount outstanding," the sum of the interest payments that must be made before the series is closed. Notice, that to the total "Equipment Trust Obligations" should be added "Miscellaneous Obligations," brought forward from page 19, to obtain "Total Miscellaneous Obligations" for transfer to page 23.

EXPLANATORY REMARKS.

(21)

FUNDED DEBT—CONTINUED.

EQUIPMENT TRUST OBLIGATIONS.

A. GENERAL STATEMENT.

Series or other Designation.	Date of Issue.	Term.	Number of Payments.	Equipment Covered.	Remarks.

B. STATEMENT OF AMOUNT.

Series or Other Designation.	Cash Paid on Delivery of Equipm't	Deferred Payments.—Principal.		Deferred Payments—Interest.				
		Original Amount	Amount Outst'ng	Original Amount.	Amount Outstand'ng.	Amt. Accru'd During Yer.	Amt. Paid During Yer.	Rate.
Total								
"Miscellaneous Obligations," page 19								
Total "Miscellaneous Obligations,"								

INSTRUCTIONS FOR ANSWERING QUESTIONS (22) ON OPPOSITE PAGE.

There should appear on the opposite page *some notation* **to indicate that the questions asked have not been overlooked. The word "None" may be used for a whole page; or a distinct table; or under any column heading; or against any particular item or items, where that word expresses the** *facts*. **In other cases, refer by note to** *this* **page, as for example, "See page 22," where a brief explanation should be given why specific data called for cannot be returned** *exactly as requested*.

RECAPITULATION OF FUNDED DEBT:

Under this head should be given the totals of the classes of debt returned on page 19, except that under "Miscellaneous Obligations" should be included "Equipment Trust Obligations," as returned on page 21. The total of *accrued interest* here given is the amount to be carried to page 31 (or 33) as "Interest on funded debt accrued.

RECEIVER'S CERTIFICATES:

It is expected, under this heading, that receivers will report not only the certificates which may have been issued since the road for which they report came into their hands, but certificates issued by former receivers as well, if any such remain outstanding.

CURRENT ASSETS AND LIABILITIES:

Under "Assets" it is desired that all assets should be returned which, in the ordinary operation of the property may be applied to the payment of current liabilities, according to following instructions:

Cash:—State under this heading the total amount of cash in the hands of the treasurer, banks, and other depositories available for use upon demand.

Bills Receivable:—The amount under this heading should represent the value of all *bona fide* and collectible obligations held by the company in the form of bills receivable, or other evidence of moneys loaned, due on demand or at a future date.

Due from Agents:—State the amount due from agents of the company, including conductors and station agents, which is to be remitted as applying to business up to and including June 30.

Net Traffic Balances:—State the amount due *from* other companies (after deducting the amount due to other companies) on operations up to and including June 30.

Due from Solvent Companies and Individuals:—Under this heading should be stated the amount due from the various sources indicated, payment of which is reasonably assured.

Other Cash Assets:—State the value of other proper cash assets, in any, naming same. *Do not include* "Materials and Supplies."

"Stock" or "Bonds Owned" should not be returned under "Current Assets," but as provided for on page 37 or 39.

For "Liabilities," the following instruction should be observed:

Receiver's Certificates:—Enter the total from the table on opposite page (23).

Loans and Bills Payable:—State the amount of all loans or bills payable due on or prior to June 30, and which remain unpaid on that date; and also all outstanding loans and bills payable not yet due, or payable on demand.

Audited Vouchers and Accounts:—State the amount of audited vouchers and of accounts applying to the business up to and including Jude 30, which have been approved for payment at the date of filing the report, or for which a recognized liability against the company exists.

Wages and Salaries:—State the amount of wages and salaries due for services rendered up to and including June 30, and remaining unpaid on that date.

Net Traffic Balances:—State the amount due *to* other companies (after deducting the amount due *from* other companies) on operations up to and including June 30.

Dividends not Called For:—State the amount of all dividends remaining unpaid on June 30, which have been declared up to and including that date.

Matured Interest Coupons Unpaid:—State the amount of all interest due and unpaid up to and including June 30; in this amount include also interest falling due as of date July 1.

Rents due July 1:—State all sums due for rent of leased roads and other properties up to and including July 1.

Miscelloneous:—State any other unfunded indebtedness not previously specified.

EXPLANATORY REMARKS.

RECAPITULATION OF FUNDED DEBT. (23)

Class of Debt.	Amt. Issued.	Amount Outstanding.	Interest. Amt. Accrued During Year.	Interest. Amt. Paid During Year.
Mortgage Bonds—Page 19	$15,008,000 00	$15,008,000 00	$893,487 50	$1,951,650 09
Miscellaneous Obligations, page 21				
Income Bonds—Page 19				
Total				

RECEIVER'S CERTIFICATES.

Date Issued.	Amount Issued.	Am't. Outstanding	Principal. Am't. Paid During Yr.	Principal. Amt. funded or otherwise Disposed of.	Interest. Amount Accrued during Yr.	Interest. Amt. Paid during Year.	Rate.
None issued.							
Total							

CURRENT ASSETS AND LIABILITIES.

CASH AND CURRENT ASSETS AVAILABLE FOR PAYMENT OF CURRENT LIABILITIES.

Cash	$ 79,007 46
Bills Receivable	
Due from Agents	128,019 76
Net Traffic Balances due from other Companies	
Due from Solvent Companies and Individuals	228,333 78
Other Cash Assets (excluding "Materials and Supplies"), 1	43,956 06
Balance—Current Liabilities	3,772,062 94
Total	$4,251,379 99

CURRENT LIABILITIES ACCRUED TO AND INCLUDING JUNE 30, 1892.

Receiver's Certificates	$
1st Mtge. Bond Coupon Certif.	757,618 50
Loans and Bills Payable	
Audited Vouchers and Accts.	235,184 03
Wages and Salaries	14,301 35
Net Traffic Balances due to other Companies	123,916 49
Dividends not called for	
Matured Interest Coupons Unpaid (including coupons due July 1),	1,248,037 41
Rents due July 1	2,426 66
Miscellaneous	1,322,993 43
Jay Gould Judgment	546,902 12
Balance—Cash Assets	
Total	$4,251,379 99

1 Materials and Supplies on hand, $170,292 84. [See General Balance Sheet—Page 49.]

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

(24)

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The upper half of the page, "A," is designed for all roads whether operating or subsidiary. The amounts returned are to be the totals that appear on the pages referred to. The lower half of the page, "B," as well as page 27, is designed exclusively for operating roads. If all the line operated is owned, the totals under "B" will be the same as those returned under "A;" but if a company operate more line than it owns, the totals will be greater, since the stocks and bonds of subsidiary companies are to be included. "Current liabilities" of this table (B), pages 25 and 27, should be given as a total, and not as a balance.

Under the caption "Amount per mile of road," the mileage to be taken for table "A" is the mileage owned; the mileage to be taken for table "B" is mileage operated, exclusive of trackage rights. It should be noticed that this page does not call for amount of mortgage per mile of line mortgaged; that fact is called for on page 57.

Under the caption "Apportionment," in table "A," an opportunity is given to distribute the capitalization and the mortgage and other indebtedness between the railroad proper and any canal, coal, and other properties which the carrier may own and which constitute part of its total estate, although independently carried on. The object is to ascertain the amount of stock and indebtedness appertaining to the railroad property the operations of which are reported. If the entire property of the carrier is substantially railroad property and is operated as a unit, the whole amount of the stock and debt will be stated under the head "To railroads." It is expected that this will usually be the case.

EXPLANATORY REMARKS.

RECAPITULATION. (25)

A. FOR MILEAGE OWNED BY ROAD MAKING THIS REPORT.

Account.	Total Amount Outstanding.	Apportionment.		Amt. per Mile of Road.		Remarks.
		To Railroads.	To Other Properties.	Miles.	Amount.	
Capital Stock, page 17.	$ 9,755,000 00	$ 9,755,000 00	None.	775 40	$12,580 60	
Bonds—Page 19. ["Grand Total"].	15,008,000 00	15,008,000 00	None.	775.40	19,355 18	
Equipment Trust Obligations—Page 21.						
Total	$24,763,000 00	$24,763,000 00		775 40	$31,935 78	

B. FOR MILEAGE OPERATED BY ROAD MAKING THIS REPORT (TRACKAGE RIGHTS EXCLUDED), THE OPERATIONS OF WHICH ARE INCLUDED IN THE INCOME ACCOUNT—Page 31.

Name of Road.	Capital Stock.	Funded Debt.	Current Liabilities.	Total.	Amt. per Mile of Road.	
					Miles.	Amount.
International & Great Northern R. R.	$9,755,000 00	$15,008,000 00	$3,772,092 94	$28,536,092 94	775 40	$36,801 78
Total carried forward						

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

(26)

There should appear on the opposite page *some notation* to indicate that the questions asked have not been overlooked. The word "None" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the *facts*. In other cases, refer by note to *this* page, as for example, "See page 26," where a brief explanation should be given why specific data called for cannot be returned *exactly as requested*.

See "Instructions," page 24.

EXPLANATORY REMARKS.

RECAPITULATION—CONTINUED. (27)

B. For Mileage Operated by Road making this Report (Trackage Rights Excluded), the Operations of which are Included in the Income Account—Page 31—Continued.

Name of Road.	Capital Stock.	Funded Debt.	Current Liabilities.	Total.	Amt. per mile of Road.	
					Miles	Amount.
Total brought forward.						
Grand Total.....						

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

(28)

There should appear on the opposite page *some notation* to indicate that the questions asked have not been overlooked. The word "None" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the *facts*. In other cases, refer by note to *this* page, as for example, "See page 28," where a brief explanation should be given why specific data called for cannot be returned *exactly as requested*.

The purpose of the opposite page is to show to what extent permanent improvements have been made upon property and equipment during the year. No charge should be made to this account for renewals or repairs, but only such expenditures as result in a permanent addition or betterment to property.

The amounts charged should be net amounts, that is to say, there should be a deduction from gross expenditures equal to the receipts from sale of property whose use is suspended, or the value of such property. In case credits for any item exceed disbursements, the balance should be entered in red ink, and an allowance made for the same in the footings.

All permanent improvements should be charged to one of the three accounts as provided on opposite page, viz.: Operating Expenses," in which case the total should be distributed in said account on pages 43 and 45; "Income Account," in which case the total should be carried to appropriate item on page 31 (or 33; this column, however, is intended for the use of those roads *only* with which it is now (or will hereafter be) a *custom* to charge permanent improvements, wholly or in part, to "Income Account;" and Construction or Equipment Account. Under the caption "Total cost to June 30, 1892," there should be entered the amount returned as "Total cost to June 30, 1891," plus the amounts "Charged to Construction or Equipment." It is these totals that should be returned on the "General Balance Sheet, page 49, against the items "Cost of Road" and "Cost of Equipment."

EXPLANATORY REMARKS.

COST OF ROAD, EQUIPMENT AND PERMANENT IMPROVEMENTS. (29)

Item.	Expenditures During Year.			Total Cost to June 30, 1891.	Total Cost to June 30, 1892.	Cost per Mile.
	Included in Operating Expenses	Not Included in Operat'g Expenses. Chrg'd to Income Act as Permanent Improvements	Not Included in Operat'g Expenses. Charged to Construction or Equipment.			
Construction:						
Right of Way			$ 859 26			
Other Real Estate						
Fences	$ 9,263 25					
Grading and Bridge and Culvert Masonry	42,262 38					
Bridges and Trestles	48,676 20					
Rails	113,212 09					
Ties						
Other Superstructure						
Buildings, Furniture & Fixtures	10,695 08					
Shop Machinery & Tools	2,161 83					
Engineering Expenses						
Intrst. during Construction						
Discount on Securities Sold for Construction						
Telegraph Line						
Wharfing, etc.						
Sidings and Yard Extensions	3,727 63					
Terminal Facilities and Elevators						
Road built by Contract						
Purchase of Constructed Road						
Other Items	51,412 40					
Total Construction	$281,412 86		$ 859 26			
Equipment:						
Locomotives	625 09		100,312 50			
Passenger Cars	3,114 60					
Sleeping, Parlor and Dining Cars						
Baggage, Express and Postal Cars						
Combination Cars						
Freight Cars	3,970 59					
Other Cars of all classes	12,962 65					
Floating Equipmens						
Total Equipment	$ 20,672 91		$100,312 50			
Grand total cost construction, equipment, etc.						
Total Cost Construction, Equipment, etc.—All State of Texas	$302,085 77		$101,171 76	$ 28,550,747 82	$ 28,651,919 58	$36,961 15

INSTRUCTIONS FOR ANSWERING QUESTIONS (30) ON OPPOSITE PAGE.

There should appear on the opposite page *some notation* to indicate that the questions asked have not been overlooked. The word "None" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the *facts*. In other cases, refer by note to *this* page, as for example, "See page 30," where a brief explanation should be given why specific data called for cannot be returned *exactly as requested*.

The Entries in the "Income Account" should be taken from the pages indicated after the items called for. Where no pages are referred to, the entries must be taken from the books of the company. It should be remembered that this page is made up on the basis of *accruals*, and every item should be given as *accrued* when that is possible; this remark applies equally to amounts returned against "Dividends."

Under "Other deductions," give only such items as are properly regarded as fixed charges and which are not specified in any of the captions under "Deductions from income." An itemized statement should also be furnished below (page 30) of any amount returned against this caption.

Under "Other payments from net income," give only such items as are properly regarded as earnings to the stockholders of the road, other than earnings which are reported as "Dividends." In every case, a full explanation should be given below (page 30) of the item entered against this heading.

Under "Additions for Year," there should be given amounts transferred from other accounts to the surplus; or amounts representing an increase in resources not properly assignable to the earnings of property operated during the year covered by this report, or to income accruing on investments during the year covered by this report.

Under "Deductions for Year," there should appear amounts transferred from the surplus as shown in "Profit and Loss" on "General Balance Sheet," for the year ending June 30, 1891, to other accounts; or amounts written off resulting from adjustments; or payments not properly chargeable to the operations of property during the year covered by this report.

If amounts returned as "Additions for Year" or Deductions for Year, are considerable, an itemized statement should be given in the blank space below on this page (30).

In order to discover the "profit and Loss" "for entry on "General Balance Sheet," page 51" (or 49), the "Profit and Loss" from last year's balance sheet should be combined with the surplds or deficit arising from the operation covered by this year's report. To this total should be added the amount returned against "Additions for Year;" or there should be deducted the amount returned against "Deductions for Year." The result will be the "Profit and Loss" to be carried to the "General Balance Sheet," page 51 (or 49).

EXPLANATORY REMARKS.

INCOME ACCOUNT. (31)

[FOR ROADS MAKING OPERATING REPORTS.]

Gross earnings from operation—Page 35	$3,568,690 26	
Less operating expenses—Page 45	2,986,204 12	
Income from operation		$582,486 14
Deficit		
Dividends on stocks owned—Page 37	8,020 00	
Interest on bonds owned—Page 39		
Miscellaneous income—less expenses—Page 41	146,104 63	
Income from other sources		154,124 63
Total income		736,610 77
Deficit		
Deductions from Income:		
Interest on funded debt accrued—Page 23	803,487 50	
Interest on interest-bearing current liabilities accrued, not otherwise provided for		
Rents—Page 47, A	14 583 32	
Taxes	28,951 35	
Permanent improvements—Page 29		
Other deductions	478 641 92	
Interest on funded debt accrued from Feb. 21, 1889, to June 30, '91,	2,107,367 88	
Total deductions from income		3,432 991 97
Net income		
Deficit		$2,696,381 20
dividends, ... per cent., common stock		
Dividends ..... per cent., preferred stock		
Other payments from net income		
Total		
Surplus from operations of year ending June 30, 1892		2,696,381 20
Deficit from operations of year ending June 30, 1892		
Surplus on June 30, 1891 [From "General Balance Sheet," 1891 report]		3,560,075 70
Deficit on June 30, 1891 [From "General Balance Sheet," 1891 report]		
Additions for year		
Deductions for year		
Surplus on June 30, 1892, [For entry on "General Balance Sheet," Page 51		$863,694 50
Deficit June 30, 1892 [For entry on "General Balance Sheet," page 49].		

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

(32)

There should appear on the opposite page *some notation* to indicate that the questions asked have not been overlooked. The word "None" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the *facts*. In other cases, refer by note to *this* page, as for example, "See page 32," where a brief explanation should be given why specific data called for cannot be returned *exactly as requested*.

This table is to show the income account of roads which are leased to other companies, or otherwise assigned for operation, but which maintain a separate organization for the purpose of distribution of rents received.

The "Instructions" given regarding the "Income Account" of operating roads, page 30, will also apply to this.

EXPLANATORY REMARKS.

INCOME ACCOUNT. (33)

[FOR ROADS NOT MAKING OPERATING REPORTS.]

Income from lease of road.....
Dividends on stocks owned—page 37.....
Interest on bonds owned—page 39.....
Miscellaneous income—less expenses—page 41.....
Income from other sources.....
Total income.....
Deficit.....

Deductions from income:
Salaries and maintenance of organization.....
Interest on funded debt accrued—page 23.....
Interest on interest bearing current liabilities accrued, not otherwise provided for.....
Rents—page 47, A.....
Taxes.....
Permanent improvements—page 29.....
Other deductions.....
Total deductions from income.....
Net income.....
Deficit.....

Dividends.....per cent. common stock.....
Dividends.....per cent. preferred stock.....
Other payments from net income.....
Total.....

Surplus from operations of year ending June 30, 1892.....
Deficit from operations of year ending June 30, 1892.....
Surplus on June 30, 1891, [From "General Balance Sheet," 1891 report].....
Deficit on June 30, 1891, [From "General Balance Sheet," 1891 report].....

Additions for year.....
Deductions for year.....

Surplus on June 30, 1892 [For entry on "General Balance Sheet," page 51.].....
Deficit on June 30, 1892. [For entry on "General Balance Sheet," page 49.].....

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

(34)

There should appear on the opposite page *some notation* **to indicate that the questions asked have not been overlooked. The word "None" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the** *facts.* **In other cases, refer by note to** *this* **page, as for example, "See page 34," where a brief explanation should be given why specific data called for cannot be returned** ***exactly as requested.***

This statement should show the actual amount of earnings from the operation of the road during the year for the respective items mentioned. The fact that any part of such earnings has not, at the time of making the report, passed into the treasurer's hands, should not preclude the same from being stated here.

It will be observed that this page is arranged to show what deductions are made from the gross receipts before stating the actual earnings from operations which pass to the "Income Account," page 31. The items of deductions called for are intended to be such moneys as in fact belong to shippers or passengers, and not to the reporting carrier, but which are temporarily in the carrier's hands.

"Commissions" are considered an expense, and should not be deducted here. Under "Freight—Other repayments," cases of refund, for the purpose of equalizing rates upon export traffic with the rates at other cities, should be shown; large amounts of "Deductions, account of repayments, etc," should be explained. The amounts from which deductions are to be made should be entered in the "Total receipts" column, and the net amounts, after deductions are subtracted, are to be shown in the last column; items from which no deductions are made are also to be stated in the last column.

The items from which earnings are derived, under the respective headings of "Passenger" and "Freight," indicate what should be stated for each, with the possible exception of "Stock Yards" and "Elevators." For these items the earnings on this page are only to be shown when directly connected with the operation of the road; also under "Other earnings from operation," the earnings from "Telegraph" and from "Rents not otherwise provided for," are only to be stated when directly connected with the operation of the road. If revenue is received from any of the items mentioned, through a tenant or otherwise, not directly connected with the operation of the road, such revenue should be entered under "Miscellaneous Income," page 41.

EXPLANATORY REMAKKS.

EARNINGS FROM OPERATION—STATE OF TEXAS. (35)

Item.	Total Receipts.	Deductions Account of Repayments, etc.	Actual Earnings.
Passenger:			
Passenger revenue			
Less repayments:			
Tickets redeemed			
Excess fares refunded			
Other repayments			
Total deductions			
Total passenger revenue			$ 872,527 05
Mail			123,036 00
Express			76,195 49
Extra baggage and storage			
Other items			
Total passenger earnings			$1,071,759 14
Freight:			
Freight revenue			
Less repayments:			
Overcharge to shippers			
Other repayments			
Total deductions			
Total freight revenue			2,463,597 02
Stock yards			
Elevators			
Other items			30,933 60
Total freight earnings			$2,494,530 62
Total passenger and freight earnings			
Other earnings from operation:			
Car mileage—Balance			
Switching charges—Balance			
Telegraph companies			
Rents from tracks, yards and terminals —Page 41			
Rents not otherwise provided for			
Other sources			2,400 50
Total other earnings			$2,400 50
Total gross earnings from operation—Texas			
Total gross earnings from operation—entire line			$3,568,690 26

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

(36)

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State the name of *all* stocks owned, whether yielding an income from dividends or not, and the par value of same. For the dividend-paying stocks, give the amount of dividends or income received srom same during the year. The amount of income here shown should be carried to "Income Account," page 31 (or 33), after deducting the expenses, if any, attending the same.

Under "Valuation," give the value at which the stocks specified are carried into the "General Balance Sheet" against the "Stocks owned," on page 49 of this Form.

If stocks have been sold during the year covered by this report, any dividends accruing on them during the time they were held, as also the rate of accrual, should be entered on the opposite page, but the par value of the stocks need not be given.

In case any changes in the amount of stocks owned have occurred during the year ocvered by this report, a full explanation of sdch changes should be given on page 53 of this Form.

EXPLANATORY REMARKS.

STOCKS OWNED. (37)

Name.	Total Par Value.	Rate.	Income or Dividends Received.	Valuation.
Colorado River Bridge Company	$225,000 00	None	None.	$15,000 00
Union Compress and Warehouse Company	22,000 00	16 per cent.	$3520 00	50,000 00
Palestine Compress Company	25,000 00	18 " "	4500 00	25,000 00
Total	$272,000 00		$8020 00	$90,000 00

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

(38)

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State the names of all bonds owned, whether yielding an income from interest or not, and the par value of same. For the interest-paying bonds give the amount of interest or income received during the year. The amount of income here shown should be carried to "Income Account," page 31 (or 33), after deducting the expenses, if any, attending the same.

Under "Valuation," give the value at which the bonds specified are carried into the "General Balance Sheet" against the item "Bonds owned," on page 49 of this Form.

If bonds have been sold during the year covered by this report, any interest accruing on them during the time they were held, as also the rate of accrual, should be entered on the opposite page, but the principal or par value of the bonds need not be given.

In case any changes in the amount of bonds owned have occurred during the year covered by this report, a full explanation of such changes should be given on page 58 of this form.

EXPLANATORY REMARKS.

$35,000.00 of Bonds shown on pag 39 of 1891 report have been sold since last report.

BONDS OWNED. (39)

Name.	Total Par Valne.	Rate.	Income or Dividend Received.	Valuation.
First Mortgage Gold Bonds, I. & G. N. R. R.	$40,500 00		None.	$40,500 00
Total				

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

(40)

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Rentals Received:

The incomes received from lease of tracks, yards, and terminals should be given by items as called for, but the total should be carried to page 35, and entered after the line, "Rents from Tracks, Yards, and Termiaals."

Miscellaneous Income:

Under this head should be entered all interest received, not otherwise provided for; all rents of buildings or other property *nat used directly* in connection with railway operations (Rents of property *directly so used* should be returned on page 35 of this Form, against "Rents not otherwise provided for"); all income from lands, coal, or other business properties, as well as all canals, bridges, ferries, steamboats, or other instrumentalities of commerce, as listed on page 10 of this Form. All expenses for the maintenance of the property upon which this miscellaneous income is derived, and expenses incurred in securing that income, should be stated under head of "Less expenses," and the difference entered in the column headed "Net miscellaneous income." The total of this column should be carried to "Income Account," page 31 (or 33). But in case of roads in whose accounts this total is not carried to "Income Account," it may be disposed of according to the "Instructions" facing page 11.

In case an operating company leases any considerable portion of its line to another company, granting thereby *exclusive use and control of the same*, the *grossin come* from such lease, the *expenses* incident to the same, and the *net income* should be duly returned under "Miscellaneous Income."

Income from "Stocks Owned" or "Bonds Owned" held during part of the year covered by this report should *not* be returned under "Miscellaneous Income," but as provided for on pages 37 and 39.

EXPLANATORY REMARKS.

RENTALS RECEIVED. (41)

RENTS RECEIVED FROM LEASE OF TRACKS, YARDS, AND TERMINALS.

Designation of Property.	Situation of Property Leased.	Name of Company Using Property Leased.	Item.	Total.
Tracks: None. Total				
Yards: None. Total				
Terminals: None. Total				
	Grand Total Rents Received [For entry on page 35.]			

MISCELLANEOUS INCOME.

Item.	Gross Income.	Less Expenses	Net Miscellaneous Income.
M., K. & T. Ry. Co. balance			$144,150 00
Unclaimed Wages			1,854 63
Total			$146,104 63

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

(42)

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A detailed analysis of "Operating Expenses" has been issued by the Commission and sent to each road making an operating report. The instructions it contains should be followed in making returns on pages 43 and 45.

For the apportionment of operating expenses between passenger and freight traffic, the following instructions prescribed by the Interstate Commerce Commission should be followed: All expenses which are naturally chargeable to either passenger or freight traffic should be entered in their respective columns; expenses which are not naturally chargeable to either traffic should be apportioned on a mileage basis, making the division as between passenger and freight traffic in the proportion which the passenger and freight train mileage bears to the total mileage of trains earning revenue. This computation should be made from the data furnished under "Train mileage," page 61.

"Loss and damage" and "Injuries to persons" should be apportioned to the train which occasioned the outlay, passenger or freight, as the fact was.

Mixed trains will continue to be treated for the present as one-fourth passenger and three-fourths freight.

Taxes are *not* to be stated under "Operating Expenses," but are to be *deducted from Income* as provided for on page 31 (or 33).

EXPLANATORY REMARKS.

OPERATING EXPENSES. (43)

[Apportionment between Passenger and Freight Traffic is Estimated According to the Rule Prescribed by the Interstate Commerce Commission.]

Item.	Chargeable to Passenger Traffic.	Chargeable to Freight Traffic	Total.
Maintenance of Way and Structure:			
1. Repairs of Roadway	$104,768 81	$314,306 42	$419,075 23
2. Renewals of Rails	28,333 40	85,000 18	113,333 58
3. Renewals of Ties	33,539 08	100,617 23	134,156 31
4. Repairs of Bridges and Culverts	48,282 99	144,848 97	193,131 96
5. Repairs of Fences, Road-crossings, Signs, and Cattle-Guards	6,218 92	18,656 77	24,875 69
6. Repairs of Buildings	30,638 02	50,555 39	80,594 01
7. Repairs of Docks and Wharves			
8. Repairs of Telegraph	1,358 60	4,075 81	5,434 41
9. Other expenses	1,172 07	3,516 20	4,688 27
Total	253,712 49	721,576 97	975,289 46
Maintenance of Equipment:			
10. Repairs and Renewals of Locomotives	48,284 41	135,167 93	183,452 34
11. Repairs and Renewals of Passenger Cars	64,828 43		64,828 43
12. Repairs and Renewals of Freight Cars		146,018 88	146,018 88
13. Repairs and renewals of Ferry-boats, Tugs, Floats, and Barges			
14. Shop Machinery, Tools, etc.	7,853 26	23,559 78	31,413 04
15. Other expenses	1,432 16	4,296 50	5,728 66
Total	124,398 26	309,043 09	433,441 35
Conducting Transportation:			
16. Wages of Enginemen, Firemen, and Roundhousemen	65,850 60	164,708 53	230,559 13
17. Fuel for Locomotives	88,739 98	286,581 11	375,321 09
18. Water-supply for Locomotives	5,822 40	17,467 21	23,289 61
19. All other supplies for Locomotives	5,957 22	15,202 67	21,159 89
20. Wages of other Trainmen	38,333 57	127,004 28	165,337 85
21. All other train supplies	3,171 64	940 94	4,112 58
22. Wages of Switchmen, Flagmen and Watchmen		66,426 56	66,426 56
23. Expense of Telegraph, including Train Dispatchers and Operators	14,932 65	45,002 67	59,935 32
24. Wages of Station Agts., Clerks & laborers	43,061 61	162,228 01	205,289 62
25. Station Supplies	2,679 11	4,616 83	7,295 94
26. Switching Charges—Balance			
27. Car Mileage—Balance	21,408 76	93,561 54	114,970 30
28. Loss and Damage	20,711 01	41,311 12	62,022 13
29. Injuries to Persons	10,350 07	28,654 39	39,004 46
30. Barges, Floats, Tugs, Ferry-boats, expenses of, including wages, fuel and supplies			
31. Other expenses	5,588 44	10,301 88	15,890 32
Total	326,607 06	1,064,007 74	1,390,614 80

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

(44)

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See "Instructions," page 42.

EXPLANATORY REMARKS.

OPERATING EXPENSES—CONTINUED. (45)

[Apportionment between Passenger and Freight Traffic is Estimated According to the Rule Prescribed by the Interstate Commerce Commission.

Item.	Chargeable to Passenger Traffic.	Chargeable to Freight Traffic	Total.
General Expenses:			
32. Salaries of Officers	$ 14,941 58	$39,590 43	$54,532 01
33. Salaries of Clerks	4,400 58	13,201 76	17,602 34
34. General Office Expenses and Supplies	192 77	578 29	771 06
35. Agencies, including Salaries and Rent	1,917 06	15,210 03	17,127 09
36. Advertising	4,338 65	62 00	4,400 65
37. Commissions	2,814 29		2,814 29
38. Insurance	6,155 83	18,467 50	24,623 33
39. Expense of Fast Freight Lines			
40. Expense of Traffic Association			
41. Expense of Stock Yards and Elevators			
42. Rents for Tracks, Yards and Terminals —Page 47, B			
43. Rents not otherwise provided for	41 97	125 92	167 89
44. Legal Expenses	8,713 84	26,141 53	34,855 37
45. Stationery and Printing	5,146 53	12,588 71	17,735 24
46. Other General Expenses	3,057 31	9,171 93	12,229 24
Total	51,720 41	135,138 10	186,858 51
Recapitulation of Expenses:			
47. Maintenance of Way and Structures	253,712 49	721,576 97	975,289 46
48. Maintenance of Equipment	124,398 56	309,043 09	433,441 35
49 Conducting Transportation	326,607 06	1,054,007 74	1,380,614 80
50. General Expenses	51,720 41	135,138 10	186,858 51
Grand Total	756,438 22	2,229,765 90	2,986,204 12
Percentage of Expenses to Earnings—Entire Line	70.58	89.30	83.68
Operating Expenses—State of Texas:			
Maintenance of Way and Structure	SAME AS ABOVE		
Maintenance of Equipment			
Conducting Transportation			
General Expenses			
Total			
Percentage of Expenses to Earnings—Texas			

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

(46)

There should appear on the opposite page *same notation* to indicate that the questions asked have not been overlooked. The word "None" may be used for a whole page; or a distinct table; or under any column heading; or against any particular item or items, where that word expresses the *facts*. In other cases, refer by note to *this* page, as for example, "See page 46," where a brief explanation should be given why specific data called for cannot be returned *exactly as requested*.

Table "A:"

State the amount of rents paid for leased roads and designate whether payment is made by payment of interest on guaranteed bonds, by payment of dividends on guaranteed stocks, or by cash payment. Carry the total to the "Income Account," page 31 (or 33, as deduction from Income, charged to "Rents."

Table "B:"

State the amount of rents paid for lease of other property as called for in the table. Carry the total to "Operating Expenses," page 45.

Payments for lease of cars or equipment should *not* be entered on opposite page as "Rents paid for Lease of Other Property," but should be returned as prescribed, on page 21 of this Form.

EXPLANATORY REMARKS.

RENTALS PAID. (47)

A. RENTS PAID FOR LEASE OF ROAD.

Name of Road.	Interest on Bonds Guaranteed	Dividends on Stocks Guaranteed.	Cash.	Total.
Colorado River Bridge Co.....	.....	.....	.....	$14,583 32
Total Rents—A.. [For entry on page 31 (or 33).]				$14,583 32

B. RENTS PAID FOR LEASE OF OTHER PROPERTY.

Designation of Property.	Situation of Property Leased.	Name of Company Owning Prpoeprty Leased.	Item.	Total.
Tracks: None.				
Total....				
Yards: None.				
Total....				
Terminals: None.				
Total....				
Grand Total Rents—B ..... [For entry on page 45, Item 42.]				

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

(48)

There should appear on the opposite page *some notation* to indicate that the questions asked have not been overlooked. The word "None" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the *facts*. In other cases, refer by note to *this* page, as for example, "See page 48," where a brief explanation should be given why specific data called for cannot be returned *exactly as requested*.

It is the object of pages 49 and 51, by means of a "Comparativ General Balance Sheet," to show the financial changes that have taken place in the financial condition of the road during the year covered by the report. On the left of each page, in first two columns, the balance sheet as it stood on June 30, 1891, should be given. In the two columns on the right, next following the printed items called for, the balance sheet as it stood on June 30, 1892, should be given. In the last two columns on the right, should be shown the difference between the items named as returned for the two dates respectively, entered in the proper column, according as that difference shows an "Increase" or a "Decrease" in the account specified.

"Cash and current assets," page 49, and "Current liabilities," page 51, should each be given as a *total* and *not as a balance*, corresponding to data returned in the lower table on page 23.

If there is a separate "Profit and Loss" account for the property returned on page 11, the net result of the year's operations may be entered as a separate item.

In case items entered in columns headed "Increase" or "Decrease" are due to consolidation or reorganization and the issue of new stocks or new bonds, or to any important financial operation during the year covered by this report, full explanation of the same should be made on page 53 of this Form.

EXPLANATORY REMARKS.

COMPARATIVE GENERAL BALANCE SHEET. (49)

June 30, 1891.		Assets.	June 30, 1892.		Year Ending June 30, 1892.	
Item.	Total.		Item.	Total.	Increase.	Decrease.
	$ 28,550,747 82	Cost of Road—page 29 Cost of Equipment—Page 29		$ 28,651,919 58	$101,171 76	
$ 60,000 00		Stocks Owned—page 37	$ 60,000 00			
75,500 00		Bonds Owned—page 39	40,500 00			
232,215 07	367,715 07	Other Permanent Investments	234,215 07	334,715 07		$ 33,000 00
		Lands Owned				
		Bonner & Bonner		384,178 80	384,178 80	
	802,929 64	Cash and current assets—Page 23		479,317 05		323,612 59
		Other Assets:				
234,305 51		Materials & supplies	170,292 84			
33,288 89		Sinking Fund				
	267,594 40	Sundries	79,314 65	249,607 49		17,986 91
		Profit and Loss—Page 31 (or 33)				
	$ 29,988,986 93	Grand Total		30,099,737 96	110,751 06	

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

(50)

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See "Instructions," page 48.

In case items entered in columns headed "Increase" or "Decrease" are due to consolidation or reorganization and the issue of new stocks or new bonds, or to any important financial operating during the year covered by this report, full explanation of the same should be made on page 53 of this Form.

EXPLANATORY REMARKS.

COMPARATIVE GENERAL BALANCE SHEET. (51)

June 30, 1891.		Liabilities.	June 30, 1892.		Year Ending June 30, 1892.	
Item.	Total.		Item.	Total.	Increase.	Decrease.
	$ 9,755,000 00	....Capital Stock—Page 17....		$ 9,755,000 00		
	15,008,000 00	... Funded Debt—Paga 23. ..		15,008,000 00		
	1,635,911 23	Current Liabilities—Page 23,		4,251,379 99	$2,615,468.76	
		Accrued Interested on Funded Debt not yet payable.		191,663 50	191,663.50	
	3,590,075 70	Profit and Loss—Page 31 (or 33)		893,694 50		$2,696,381.20
	$ 29,988,986 93	.....Grand Total.....		$ 30,099,737 99	$110,751.06	

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

(52)

There should appear on the opposite page *some notation* to indicate that the questions asked have not been overlooked. The word "None" may be used for a whole page; or against any particular item or items, where that word expresses the *facts*. In other cases, refer by note to *this* page, as for example, "See page 52," where a brief explanation should be given why specific data called for cannot be returned *exactly as requested*.

It is the purpose of the questions asked on page 53 to obtain a full explanation of all changes reported by the road for the year covered by this Form, and attention is especially called to the necessity of answering these questions in an explicit manner.

See, also, "Instructions," pages 2, 8, 16, 18, 36, 38, 48, and 50.

EXPLANATORY REMAKKS.

IMPORTANT CHANGES DURING THE YEAR—STATE OF TEXAS. (53)

Here present statements as follows: 1. All Extensions of Road put in Operation. 2. Decrease in Mileage by Line Abandoned or Line Straightened. 3. All important Physical Changes (other than those above referred to.) 4. All Leases taken or surrendered. 5. All Consolidations or Reorganizations effected. 6. All new Stocks issued. 7. All new Bonds issued. All important Financial Changes (other than those referred to.)

1. None.
2. None.
3. None.
4. None.
5. None.
6. None.
7. None.

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

(54)

There should appear on the opposite page *some notation* to indicate that the questions asked have not been overlooked. The word "None" may be used for a whole page; or against any particular item or items, where that word expresses the *facts*. In other cases, refer by note to *this* page, as for example "See page 54," where a brief explanation should be given why specific data called for cannot be returned *exactly as requested*.

It is the purpose of the questions asked on the opposite page to obtain a concise statement of all existing "Contracts, Agreements, Arrangements, etc." The point of especial importance is, that the basis for computing either receipts or payments should be given in the case of every contract involving a receipt or a payment. If sufficient space is not provided by the Form additional pages may be inserted.

EXPLANATORY REMARKS.

CONTRACTS, AGREEMENTS, ETC., AFFECTING BUSINESS WITHIN STATE

STATE OF TEXAS. (55)

Here give a concise statement of all existing Contracts, Agreements, Arrangements, etc., with other Companies or Persons, concerning the Transportation of Freight or Passengers. Give the statement in the following order, viz.: 1. Express Companies. 2. Mails. 3. Sleeping, Parlor, or Dining Car Companies. 4. Freight or Transportation Companies or Lines. 5. Other Railroad Companies. 6. Steamboat or Steamship Companies. 7. Telegraph Companies. 8. Other Contracts.

1. Pacific Express Company.
2. United States.
3. Pullman Palace Car Company.
4. American Refrigirator Transit Company.
5. Missouri, Pacific Railway Company.
   Missouri, Kansas & Texas Ry Co.
   Texas & Pacific Ry Co.
   St. Louis Southwestern Ry Co.
   San Antonio & Aransas Pass Ry Co.
   Union Pacific Ry Co.
   St. Louis & San Francisco Ry Co.
   Southern Pacific Co. (Atlantic System.)
   Southern Pacific Co. (Pacific System.)
   Little Rock & Memphis R. R. Co.
   Kansas City, Fort Scott & Memphis R. R. Co.
   Houston & Texas Central Ry Co.
   Gulf, Colorado & Santa Fe Ry Co.
   Chicago, Burlington & Quincy R. R. Co.
   Chicago & East Illinois R. R. Co.
   Chicago & Alton R. R. Co.
   Cleveland, Cincinnati, Chicago & St. Louis Ry Co.
   Illinois Central R. R.
   Atchison, Topeka & Santa Fe R. R. Co.
   Mexican National R. R. Co.
   Wabash R. R. Co.
   East Line & Red River R. R. Co.
   Fort Worth & Denver City Ry Co.
   Velasco Terminal Ry Co.
6. None.
7. Western Union Telegraph Co.
8. None.

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

(56)

There should appear on the opposite page *some notation* to indicate that the questions asked have not been overlooked. The word "None" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the *facts*. In other cases, refer by note to *this* page, as for example, "See page 56," where a brief explanation should be given why specific data called for cannot be returned *exactly as requested*.

This table is intended to show what property is mortgaged for the payment of the "Funded Debt," page 23, "Recapitulation." The statement should be concise, and should show all securities given for every class of bond or secured obligation outstanding against the company.

EXPLANATORY REMARKS.

SECURITY FOR FUNDED DEBT—PAGE 23. (57)

Class of Bond or Obligaton.	What Road Mortgaged.			Amount of Mortgage Per Mile of Line.	What Equipment Mortgaged.	What Income Mortgaged.	What Securities Mortgaged.
	From—	To—	Miles.				
First Mtge. Gold Bonds.	All the Road & Branches.		775.40	$10,257.93	All.		None.
Second Mtge. Gold Bonds	All the Road & Branches.		775.40	9,097.24	All.		None.

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSTE PAGE.

(58)

There should appear on the opposite page *some notation* to indicate that the questions asked have not been overlooked. The word "None" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the *facts*. In other cases, refer by note to *this* page, as for example, "See page 58," where a brief explanation should be given why specific data called for cannot be returned *exactly as requested*.

In this table, state the specific "Number" of each class of employees as determined from the pay-rolls on June 30, 1892; the "Total number of days worked," and the "Total yearly compensation," should be given for each class of employees named. There should also be given the "Average daily compensation" for employees in each class computed according to the following rule: First, ascertain the number of days worked by the employees of any class named during the year covered by this report, to be entered under "Total number of days worked;" second, ascertain the total compensation paid to the employees of the class during said year, to be entered under "Total yearly compensation;" third, divide the "Total yearly compensation" by the "Total number of days worked," and the quotient will be the "Average daily compensation" for working days of the employees in the class named.

Under "Distribution of above," data should be given only against the four sub-headings printed, and in making the distribution called for, if nothing is to be returned opposite any one or more of these sub-headings, the same should be explained briefly, especially when figures are returned on pages 43 and 45, unier the four corresponding sub-headings of "Operating expenses." The four items against each "Total" in the lower part of the table should *agree exactly* with similar entries opposite corresponding "Total" above; the same remark applies to data returned against "Less General Officers.'"

EXPLANATORY REMARKS.

EMPLOYEES AND SALARIES—STATE OF TEXAS. (59)

Class.	No.	Total No. Days Worked.	Total Yearly Compensation	Aver'g. Daily Compensation.
General Officers	17	6,205	$ 78,453 96	12 64
Local Attorneys on Line of Road	7	2,555	13,112 28	5 13
General Office Clerks	108	39,420	108,000 00	2 74
Station Agents	90	32,850	81,325 80	2 48
Other Station Men	221	80,695	142,739 40	1 77
Enginemen	121	44,165	151,872 60	3 44
Firemen	135	49,275	95,230 80	1 93
Conductors	77	28,105	86,317 80	3 07
Other Trainmen	152	55,845	108,291 60	1 94
Machinists	211	65,410	154,143 60	2 36
Carpenters	149	46,190	116,780 40	2 53
Other Shopmen	239	74,090	146,101 20	1 97
Section Foremen	130	47,450	85,278 60	1 80
Other Trackmen	641	201,190	240,644 40	1 19
Switchmen, Flagmen, and Watchmen	115	41,975	97,573 80	2 32
Telegraph Operators and Dispatchers	52	20,805	49,782 60	2 39
Employees—account Floating Equipment				
All other Employees and Laborers	217	67,270	125,539 20	1 86
Total (Including "General Officers")—Texas	2906	903,465	$1,881,188 04	2 09
Less "General Officers"	17	6,205	78,453 96	
Total (Excluding "General Officers")—Texas	2079	897,260	$1,802,734 08	2 01
Distribution of Above:				
General Administration	132	48,180	199,566 24	4 14
Maintenance of Way and Structures	1000	317,150	484,549 80	1 52
Maintenance of Equipment	523	162,130	342,691 20	2 11
Conducting Transportation	1041	376,005	855,980 80	2 27
Total (Including "General Officers")—Texas	2906	903,465	$1,881,188 04	
Less "General Officers"	17	6,205	78,453 96	
Total (Excluding "General Officers")—Texas	2079	897,260	$1,802,734 08	
Total (Including "General Officers")—Entire Line				

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

(60)

There should appear on the opposite page *some notation* to indicate that the questions asked have not been overlooked. The word "None" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the *facts*. In other cases, refer by note to *this* page, as for example, "See page 60," where a brief explanation should be given why specific data called for cannot be returned *exactly as requested*.

The division of "Operating Expenses" between passenger and freight traffic, as per pages 43 and 45, together with the ton and passenger mileage, give the basis for arriving at the "Estimated cost of carrying each passenger one mile," and "Estimated cost of carrying one ton one mile." In computing these items, as well as the "Average amount received from each passenger," "Average receipts per passenger per mile," "Passenger earnings per train miles," and the corresponding items called for under "Freight Traffic," the amounts should be *carefully figured to five places* beyond the decimal point, entries of results being made under the proper headings of "Dollars," "Cents," and "Mills."

Make sure that against "Total passenger *revenue*," "Total passenger *earnings*," and similar items under "Freight traffic," are entered the respective amounts returned on page 35 opposite said items; also, in the computation of "Passenger *earnings* per mile of road," "Passenger *earnings* per train mile," and the corresponding items under "Freight Traffic," that "Total Passenger *earnings*" and "Total freight earnings," respectively, are used. In figuring "Passenger earnings *per mile of road*," "Freight earnings *per mile of road*," and the four "per mile of road" items under "Passenger and Freight," the "Total mileage operated" (single track) should in each case be used as returned on page 69 under Table "A." In computing "Passenger *earnings* per train mile," add 25 per cent. of "Miles run by *mixed* trains" to the number of "Miles run by *passenger* trains," to obtain the proper divisor; for "Freight *earnings* per train mile," add 75 per cent. of "Miles run by *mixed* trains" to the number of "Miles run by *freight* trains."

"Miles run by switching trains" may be given according to the method heretofore in use, or such other method as shall be considered most accurate. State upon this page (60) the process pursued in ascertaining mileage of switching trains.

EXPLANATORY REMARKS:

PASSENGER AND FREIGHT, AND TRAIN MILEAGE—STATE OF TEXAS. (61)

ITEM.	Column for Tonnage, No. Passengers, No. of Trains, Mileage, Number Cars.	Columns for Revenue and Rates. Dollars.	Cents.	Mills.
Passenger Traffic:				
Number of passengers carried earning revenue	582,542			
Number of passengers carried one mile	31,746,126			
Average distance carried	54.49			
Total passenger revenue—Page 35		872,527	05	
Average amount received from each passenger		1	49	7.59
Average receipts per passenger per mile			02	7.49
Estimated cost of carrying each passenger one mile			02	3.83
Total passenger earnings—Page 35		1,071,759	14	
Passenger earnings per mile of road		1,382	20	
Passenger earnings per train mile		1	10	4.60
Freight Traffic:				
Number of tons carried of freight earning revenue	911,815			
Number of tons carried one mile	182,333,955			
Average distance haul of one ton	199.97			
Total freight revenue—Page 35		2,463,597	02	
Average amount received for each ton of freight		2	70	1.86
Average receipts per ton per mile			01	3.51
Estimated cost of carrying one ton one mile			01	2.23
Total freight earnings—Page 35		2,404,530	62	
Freight earnings per mile of road		3,217	09	
Freight earnings per train mile		1	59	7.45
Passenger and Freight:				
Passenger and freight revenue—Page 35		3,336,124	07	
Passenger and freight revenue per mile of road		4,302	46	
Passenger and freight earnings—Page 35		3,509,289	76	
Passenger and freight earnings per mile of road		4,566	29	
Gross earnings from operation—Page 35		3,568,690	26	
Gross earnings from operation per mile of road		4,602	39	
Expenses—Page 45		2,986,204	12	
Expenses per mile of road		3,851	18	
Train Mileage:				
Miles run by passenger trains	970,273			
Miles run by freight trains	1,561,572			
Miles run by mixed trains				
Total Mileage Trains Earning Revenue	2,531,845			
Miles run by switching trains	382,641			
Miles run by construction and other trains	70,696			
Grand Total Train Mileage	2,985,182			
Mileage of loaded freight cars—North or East				
Mileage of loaded freight cars—South or West	19,278,827			
Mileage of empty freight cars—North or East				
Mileage of empty freight cars—South or West	9,879,726			
Average number of freight cars in train	18.6			
Average number of loaded cars in train	12.3			
Average number of empty cars in train	6.3			
Average number of tons of freight in train	116.76			
Average number of tons of freight in each loaded car	9.46			

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

(62)

There should appear on the opposite page *some notation* to indicate that the questions asked have not been overlooked. The word "None" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the *facts*. In other cases, refer by note to *this* page, as for example, "See page 62," where a brief explanation should be given why specific data called for cannot be returned *exactly as requested*.

See "Instructions," page 60, observing that references to "page 35" in the second paragraph do not apply to filling out page 63, unless data returned on page 35 of the Annual Report to the Interstate Commerce Commission is used.

EXPLANATORY REMARKS.

PASSENGER AND FREIGHT, AND TRAIN MILEAGE—ENTIRE LINE. (63)

ITEM.	Column for Tonnage, No. Passengers, No. of Trains, Mileage, Number Cars.	Columns for Revenue and Rates.		
		Dollars.	Cents.	Mills.
Passenger Traffic:				
Number of passengers carried earning revenue				
Number of passengers carried one mile				
Average distance carried				
Total passenger revenue				
Average amount received from each passenger				
Average receipts per passenger per mile				
Estimated cost of carrying each passenger one mile				
Total passenger earnings				
Passenger earnings per mile of road				
Passenger earnings per train mile				
Freight Traffic:				
Number of tons carried of freight earning revenue				
Number of tons carried one mile				
Average distance haul of one ton				
Total freight revenue				
Average amount received for each ton of freight				
Average receipts per ton per mile				
Estimated cost of carrying one ton one mile				
Total freight earnings				
Freight earnings per mile of road				
Freight earnings per train mile				
Passenger and Freight:				
Passenger and freight revenue				
Passenger and freight revenue per mile of road				
Passenger and freight earnings				
Passenger and freight earnings per mile of road				
Gross earnings from operation				
Gross earnings from operation per mile of road				
Expenses				
Expenses per mile of road				
Train Mileage:				
Miles run by passenger trains				
Miles run by freight trains				
Miles run by mixed trains				
Total Mileage Trains Earning Revenue				
Miles run by switching trains				
Miles run by construction and other trains				
Grand Total Train Mileage				
Mileage of loaded freight cars—North or East				
Mileage of loaded freight cars—South or West				
Mileage of empty freight cars—North or East				
Mileage of empty freight cars—South or West				
Average number of freight cars in train				
Average number of loaded cars in train				
Average number of empty cars in train				
Average number of tons of freight in train				
Average number of tons of freight in each loaded car				

INSTRUCTIONS FOR ANSWERING QUESTIONS (64) ON OPPOSITE PAGE.

There should appear on the opposite page *some notation* to indicate that the questions asked has not been overlooked. The word "None" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the *facts*. In other cases, refer by note to *this* page, as for example, "See page 64," where a brief explanation should be given why specific data called for cannot be returned *exactly as requested*.

This page calls for a statement of the total tonnage carried by each road of the various commodities mentioned, *company's material excluded*. It will be observed that the table calls for the names of any important commodities which are carried by the roads and which are not specifically provided for in the Form. *The object of the second column* ("Freight Originating on this Road") *is to enable the Commission to obtain the total movement throughout the country of the commodities named.* Each carrier should report in this column the tonnage of all traffic which originates at any and every point on its line. All traffic which is received from rail or water connections directly, whether through elevators or other methods of transfer, and the initial movement of which has been on the line of other carriers, should be given in the next column. Each carrier supplying the data called for by this table should adopt such methods as will prevent the same traffic being reported as originating on more than one line. The second column is intended to show only the initial movement of the traffic.

The percentage should be computed to show what proportion the total tonnage of each commodity bears to the total tonnage of all commodities carried.

EXPLANATORY REMARKS.

FREIGHT TRAFFIC MOVEMENT—STATE OF TEXAS. (65)
[COMPANY'S MATERIAL EXCLUDED.]

COMMODITIY.		Freight Originating on this Road.—Whole Tons.	Freight Received from Connecting Roads and Other Carriers Whole Tons.	Total Freight Tonnage. Whole Tons.	Per Ct.
Products of Agriculture.	Grain	1574	57,638	59,212	6.49
	Flour	3496	21,671	25,167	2.76
	Other Mill Products	4660	8721	13,381	1.47
	Hay				
	Tobacco				
	Cotton	66,622	21,993	88,615	9.72
	Fruit and Vegetables	403	13,741	14,144	1.55
	Cotton Seed and its Products	18,648	18,971	37,619	4.13
	Other Agricultural Products	2280	12,880	15,170	1.66
Products of Animals.	Live Stock	44,785	13,840	58,625	6.43
	Dressed Meats				
	Packing-house Products	39	7736	7775	0.85
	Poultry, Grime, and Fish				
	Wool	1211	23	1234	0.14
	Hides and Leather				
	Other Products	644	603	1247	0.14
Products of Mines.	Anthracite Coal,				
	Bituminous Coal,	8088	125,382	134,070	14.70
	Coke				
	Ores		15,612	15,612	1.71
	Stone, Sand and other like articles	3812	3320	7132	.78
	Other Mine Products	740	18,498	19,238	2.11
Products of Forest.	Lumber	17,357	150,328	167,686	18.39
	Other Articles	27,508	12,122	39,630	4.36
Manufactures.	Petroleum and other Oils				
	Sugar				
	Naval Stores				
	Iron Pig and Bloom				
	Iron and Steel Rails				
	Other Castings and Machinery				
	Bar and Sheet Metal				
	Cement, Brick and Lime				
	Agricultural Implements				
	Wagons, Carriages, Tools, etc				
	Wines, Liquors, and Beers				
	Household Goods and Furniture				
	Merchandise and Manufactures	42,503	139,513	182,106	19.97
	Miscellaneous Other Commodities not mentioned above	12,492	11,561	24,053	2.64
	Total Tonnage—Texas	257,452	654,163	911,815	100.00
	Total Tonnage—Entire Line.				

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

(66)

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This page calls for a statement of the equipment owned or leased by the company making the report. Under "Cars leased," all cars should be shown which are considered as owned by equipment companies, cartrusts, etc., in use by the reporting company; any locomotives that are *similarly* "Leased" should be returned against the latter item as provided for under "Locomotives." It is expected that sums paid towards the purchase of equipment (that is, locomotives or cars) upon such contracts will appear in the "General Balance Sheet," page 49, as a separate item, under other "Other assets."

In giving the "Kind" of "Train Brake" and "Automatic Coupler," be very careful to *write clearly* and *spell correctly* the name or names of each style of train brake or automatic coupler in use.

EXPLANATORY REMARKS.

DESCRIPTION OF EQUIPMENT. (67)

ITEM.	Number Added During Year.	Total Number at End of Year.	Equipment Fitted with Train Brake. No.	Equipment Fitted with Train Brake. Kind.	Equipment Fitted with Automatic Coupler. No.	Equipment Fitted with Automatic Coupler. Kind.
Locomotives:						
Passenger		20	20	Westinghouse air.		
Freight	10	56	56	" "		
Switching		12	7	" "		
Leased [See "Instructions," page 64]			6	American Steam.		
Total Locomotives		88	88			
Cars in Passenger Service:						
First-class Passenger Cars	2	15	15	Westinghouse.	15	Miller.
Second-class Passenger Cars		24	24	"	24	"
Combination Passenger Cars						
Emigrant Cars						
Dining Cars						
Parlor Cars						
Sleeping Cars						
Baggage, Express and Postal Cars		20	20	Westinghouse.	20	Miller.
Other Cars in Passenger service						
Officers' Coaches		2	2	"	2	"
Total		61	61		61	
Cars in Freight Service:						
Box Cars		1255				
Flat Cars		230				
Stock Cars		193				
Coal Cars		241	30	Westinghouse.		
Tank Cars						
Refrigerator Cars						
Other Cars						
Total		1919	30			
Cars in Company's Service:						
Gravel Cars						
Derrick Cars		2	2	Westinghouse.		
Caboose Cars		50	7	"		
Other road Cars		28				
Total		80	9			
Cars Contributed to Fast Freight Line Service						
Total Cars Owned		2062				
Cars Leased [See "Instructions," page 64.]						
Grand Total Cars		2062				

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

(68)

There should appear on the opposite page *some notation* to indicate that the questions asked have not been overlooked. The word "None" may be used for a whole page; or a distinct table; or under any column heading; or against any particular item or items, where that word expresses the *facts*. In other cases, refer by note to *this* page, as for example, "See page 68," where a brief explanation should be given why specific data called for cannot be returned *exactly as requested*.

In giving the information called for on opposite page, do not omit to return under each table, as may be required, the mileage of "Iron" and "Steel" "Rails," exclusive of "Line operated under trackage rights," which should be returned *only by the owning company*.

A. Mileage of Road Operated.

Give the actual length of line as single track under the headings called for, taking notice that the *classification* and figures here are the same as those appearing on page 9 of the Form. Explanation of the terms used may be found on page 8. Please notice particularly what is said with reference to "Spurs." This table is for the use only of roads making Operating Reports.

B. Mileage of Line by States and Territories.

Under table "I" give name of each State and Territory in which the *operated* road is situated, and extend the proper mileage figures through the table, on the basis of actual length of *single track* in each State and Territory. The mileage to be distributed is total mileage *operated, less line operated under trackage rights*. This table is for the use only of roads making Operating Reports.

In like manner, under Table "II," give name of each State and Territory in which the *owned* road is situated, extending the proper mileage figures through this table as directed for "I," the mileage to be distributed being total mileage *owned*. "Line of proprietary companies" is *not* to be entered in this table. It should be observed that table "II" is for the use of *all roads* making reports whether operating or subsidiary.

EXPLANATORY REMARKS.

MILEAEG. (69)

A. MILEAGE OF ROAD OPERATED.

Line in Use.	Line Represented by Capital Stock.		Line of Proprietary Companies.	Line Operated Under Lease.	Line Operated under Contract, etc.	Line Operated under Trackage Rights.	Total Mileage Operated.	New Line Constructed During Year.	Rails.	
	Main Line.	Branches and Spurs.							Iron.	Steel.
Miles of Single Track	691.40	84.00	None.	None.	None.	None.	775.40	None.	43.26	732.14
Miles of Second Track										
Miles of Third Track										
Miles of Fourth Track										
Miles of Yard Track and Sidings.	91.81	4.23					96.04		96.04	
Total Mileage Operated (all tracks	783.21	88.23					871.44		139.30	732.14

B. MILEAGE OF LINE BY STATES AND TERRITORIES.

I. Mileage Operated by Road Making this Report.

State or Territory.	Line Represented by Capital Stock.		Line of Proprietary companies	Line Operated under Lease.	Line Operated under Contract	N. line const'd during year.	Total Mileage Excluding Trackage Rights.	line op'rtd under trkg rgts	Rails.	
	Main Line	Branches & Spurs.							Iron.	Steel.
In Texas	691.40	84.00					775.40		43.26	732.14
Total Mileage Operated (single tracd)										

II. Mileage Owned by Road Making this Report.

Texas	691.40	84.00					775.40		43.26	732.14
Total Mileage Owned(single tr k)										

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

(70)

There should appear on the opposite page *some notation* to indicate that the questions asked have not been overlooked. The word "None" may be used for a whole page; or a distinct table; or under any column heading; or against any particular item or items, where that word expresses the *facts*. In other cases, refer by note to *this* page, as for example, "See page 70," where a brief explanation should be given why specific data called for cannot be returned *exactly as requested*.

Under "Consumption of Fuel by Locomotives," the ton of *two thousand pounds* should be used in reporting coal. In stating the total tonnage of fuel consumed, the tonnage of wood is to be estimated as follows: Hard wood, one and one-half cords to be equivalent to one ton of coal; soft wood, two cords to be equivalent to one ton of coal. In stating "Average cost at distributing point," different points may be named if desired, giving the cost at each.

EXPLANATORY REMARKS.

RENEWALS OF RAILS AND TIES—STATE OF TEXAS. (71)

NEW RAILS LAID DURING YEAR.				NEW TIES LAID DURING YEAR.		
Kind.	Tons.	Weight per Yard.	Av'rg price per ton at Distributing Point	Kind.	No.	Average Price at Distributing Point.
Iron				Switch Ties—Sets	53	$37.50 pr set
None.				Cross Ties—1st class	127,278	39
				" " " "	62,732	38½
Total Iron				" " " "	53,229	37½
				" " " "	65,293	36½
				" " " "	15,931	35½
				" " " "	4,964	33½
Steel:				" " 2nd class	13,846	16½
					1,988	15½
Main Line	50 29-2240	70.00	$34 50		330	14½
					6,224	13½
					86	12½
Main Line	72 9227-2240	56 00	29 10			
Total Steel				Total	351,831	36.48

CONSUMPTION OF FUEL BY LOCOMOTIVES—STATE OF TEXAS.

Locomotives.	Coal—Tons.		Wood—Cords.		Total Fuel Consumed. Tons.	Miles Run.	Average Pounds Consum'd per Mile.
	Anthracite	Bituminous.	Hard.	Soft.			
Passenger		23,765.00		438.00	24,203.00	970,873.00	49.86
Freight		68,888.00		736.00	69,624.00	1,626,415.00	85.62
Switching		8,437.00		182.00	8,619.00	382,641.00	45.05
Construction		2,444.00			2,444.00	72,736.00	67.20
Total		103,534.00		1356.00	104,890.00	3,052,665.00	68.72
Average Cost at distributing potnt.		3 69	2 68				

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

(72)

There should appear on the opposite page *some notation* to indicate that the questions asked have not been overlooked. The word "None" may be used for a whole page; or a distinct table; or under any column heading; or against any particular item or items, where that word expresses the *facts*. In other cases, refer by note to *this* page, as for example, "See page 72," where a brief explanation should be given why specific data called for cannot be returned *exactly as requested*.

In filling out the table of "Accidents to Persons," the necessity of a proper classification should be held in mind. Especially should it be noted that the number "Killed" or "Injured," returned against "Other train accidents," should include only such as are not properly chargeable to "Collisions" and "Derailments." For the purpose of insuring proper returns in this regard, a brief description of casualties resulting from "Other train accidents," as also of casualties resulting from "Other causes," should be given below on this page (72), the same to be stated *in order* for both kinds of accident, and for the different classes of persons "Killed" or "Injured." An "Other train accident" is understood to be an accident to a train, resulting in an accident to a person, and not more properly assignable to "Collisions" or "Derailments."

Notice that the "Total" columns under "Others," in the lower half of the page, call for only the "Killed" and "Injured" of those "*Trespassing*" and "*Not trespassing*," and that "Passengers" "Killed" and "Injured" should *not* be included under said "Total."

Employees (Other train accidents) Brakeman knocked off car by tank water spout.
" " track by train while asleep on track.
Employee trying to get on train in motion.
" injured by coal shute falling on him.
Passengers (Other train accidents) Passenger jumped from train in motion.
" " " " "
" " " " "
" " " " "
" while intoxicated fell from train.
" while crazy jumped from train.
Trespassing—Injured while attempting to board moving train.
" " " " " "
Killed " " " " "
" " " " " "

" " lying on track asleep or drunk.
" " " " " "
" " " " " "
" " sitting " " "
" " stealing ride (tramp)
Injured while jumping from train (tramp.)
" " climbing between cars in train.
" " walking on track was struck by train.
" " stealing ride.
" by falling from train while stealing ride.
Other causes (Others)—while walking on Colorado bridge he fell off.

EXPLANATORY REMARKS.

ACCIDENTS TO PERSONS—STATE OF OHIO. (73)

Kind of Accident.	EMPLOYEES.							
	Trainmen.		Switchmen, Flagmen, and Watchmen.		Other Employees.		Total.	
	Killed.	Injur'd	Killed.	Injur'd	Killed.	Injur'd	Killed	Injured
Coupling and Uncoupling	3	8	1	13		1	4	22
Falling from Trains & Engines		1	1			6	1	7
Overhead Obstructions								
Collisions				1	2	3	2	4
Derailments		1				1		2
Other Train accidents (Describe briefly on page 70)		2				1		3
At Highway crossings								
At Stations						1		1
Other Causes (Describe briefly on page 70)				1				1
Total	3	12	2	15	2	13	7	40

Kind of Accident.	Passengers.		OTHERS.				TOTAL. See "Instructions," page 70.	
			Trespassing.		Not trespassing			
	Killed.	Injur'd	Killed	Injur'd	Killed.	Injur'd	Killed.	Injur'd
Collisions		5						5
Derailments.								
Other train accidents (Describe briefly on page 70)		6	7	7			7	13
At Highway Crossings						9		9
At Stations					1	1	1	1
Other Causes (Describe briefly on page 70)				1				1
Total		11	7	8	1	10	8	29

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

(74)

There should appear on the opposite page *some notation* to indicate that the questions asked have not been overlooked. The word "None" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the *facts*. In other cases, refer by note to *this* page, as for example, "See page 74," where a brief explanation should be given why specific data called for cannot be returned *exactly as requested*.

The "Alignment" and "Profile" of each working division or separate branch of the road are to be given on page 75. The general direction of the ascending and descending grades should be stated.

EXPLANATORY REMARKS.

CHARACTERISTICS OF ROAD. (75)

Working Disvisions or Branches.			Alignment.			Profile.						
							Ascending Grades			Descend'g Grades		
From—	To—	Miles	Number of Curves.	Aggregate Length of Curved Lines—Miles.	Length of Straight Line—Miles.	Length of Level Line—Miles.	Number.	Sum of Ascents. Feet.	Aggregate Length of Ascending Grades—Miles.	Number.	Sum of Descents Feet.	Aggregate Length of Descending Grades—Miles.
Laredo	San Antonio	153.70	38	6.50	147.20	39.60	103	2047.48	61.90	99	1812.48	52.20
San Antonio	Taylor.	116.50	89	16.60	99.90	20.50	142	1789.86	46.80	166	1868.86	49.20
Taylor.	Palestine	144.80	125	34.90	109.90	30.00	133	1922.98	56.30	146	1881.98	58.50
Palestine	Longview.	81.30	111	31.10	50.20	12.70	71	1270.36	30.40	66	1411.90	38.20
Houston.	Willis	47.00	8	3.00	44.00	16.20	38	437.33	24.80	24	165.55	6.00
Willis	Palestine	103.70	132	33.10	70.60	14.00	119	1609.82	50.80	103	1543.00	38.90
Troupe	Mineola.	44.40	64	13.70	30.70	5.30	55	756.60	19.30	60	802.70	19.80
Columbia	Houston.	50.00	7	6.20	43.80	21.50	55	67.40	19.00	39	57.90	9.50
Round Rock	Georgetown.	10.00			10.00	2.40	26	190.67	3.80	29	162.00	3.80
Overton.	Henderson	16.00			16.00	3.90	23	333.00	6.10	25	318.00	6.00
Phelps.	Huntsville	8.00			8.00	1.20	24	183.00	3.30	30	188.10	3.50
Total		775.40	574	145.10	630.30	167.30	789	10908.5[illegible]	322.50	787	10242.47	285.60

INSTRUCTIONS FOR ANSWERING QUESTIONS ON OPPOSITE PAGE.

(76)

There should appear on the opposite page *some notation* to indicate that the questions asked have not been overlooked. The word "None" may be used for a whole page; or a distinct table; or under any column heading; or against any particular item or items, where that word expresses the *facts*. In other cases, refer by note to *this* page, as for example, "See page 76," where a brief explanation should be given why specific data called for cannot be returned *exactly as requested*.

Bridges, Trestles, Tunnels, Etc.:

Under "Overhead highway crossings," should be given the number of crossings for wagons and foot passengers that pass over the line of road making this report.

Under "Overhead railway crossings," should be given the number of overhead bridges, masonry or embankment conduits, and trestles, making a part of the road-bed of other railway companies.

An itemized statement of facts pertaining to the matter of Overhead crossings would be appreciated, and the space below on this page (76) may be used for such purpose.

Gauge of Track:

Where more then one gauge of track is in use on the line of road reporting, specify the different gauges and the number of miles of each. This information should cover only mileage *owned*.

Telegraph:

The information called for in this table should be carefully furnished in detail as requested.

EXPLANATORY REMARKS.

Combination Bridges.—There are only two combination spans proper, each 125 feet. There are (3) three Deck spans, one (1) Truss Girder, and one Horse Truss, running from 25 feet up, which I have classed with combination spans, as their class is not shown in form.

CHARACTERISTICS OF ROAD—CONTINUED—STATE OF TEXAS. (77)

BRIDGES, TRESTLES, TUNNELS, ETC.

Item.	Number.	Aggregate Length. Feet.	In.	Minimum Length. Feet.	In.	Maximum Length. Feet.	In.
Bridges:							
Stone	52	788	00	12	00	18	00
Iron	45	6204	00	33	00	300	00
Wooden	None.						
Combination	7	743	00	25	00	125	00
Total	104	7735	00				
Trestles	1324	111,478	00	16	00	2448	00
Tunnels	None.						

Item.	No.	Height of Lowest Above Surface of Rail. Feet.	In.
Overhead Highway Crossings:			
Bridges	None		
Conduits			
Trestles			
Total			
Overhead Railway Crossings:			
Bridges	None		
Conduits			
Trestles			
Total			
Tunnels			

Gauge of Track, 4 feet 8½ inches. 775 [Miles.] 40 [Hundredths.] Miles.

Do ..... Feet, ... [Miles.] ..... [Hundredths.] Miles.

TELEGRAPH.

A. OWNED BY COMPANY MAKING THIS REPORT.

Miles of Line.	Miles of Wire.	Operated by this Co. Miles of Line.	Miles of Wire.	Operated by Another Company. Miles of Line.	Miles of Wire.	Name of Operating Company.
None owned by Company.						

B. OWNED BY ANOTHER COMPANY, BUT LOCATED ON THE PORPERTY OF ROAD MAKING THIS REPORT.

Miles of Line.	Miles of Wire.	Name of Owner.	Name of Operating Company.
775.40	1410.00 1243.80	Western Union Tel. Co.	I. & G. N. R. Co. Western Union Tel. Co.

INSTRUCTIONS FOR ANSWERING QUESTION (78) ON OPPOSITE PAGE.

There should appear on the opposite page *some notation* to indicate that the question asked has not been overlooked. The word "None" may be used for a whole page; or against any particular item or items, where that word expresses the *facts*. In other cases, refer by note to *this* page, as for example, "See page 78," where a brief explanation should be given why specific data called for cannot be returned *exactly as requested*.

In returning the information requested on opposite page, as complete a list as possible should be given of the *names* of "*all* Individuals, Co-operative Fast Freight Lines, and Stock Companies" of the class stated, *exclusive* of the names of other railroad companies.

EXPLANATORY REMAKKS.

CAR MILEAGE. (79)

State below *all* Individuals, Co-aperative Fast Freight Lines, and Stock Companies to which the Company making this Report pays Mileage for the use of Cars.

American Live Stock Transportation Co.
American Refrigerator Tran. Co.
Armour Packing Co.
Armour Refrigerator Line.
Arm's Palace Horse Car Co.
Blue Line Tran. Co.
Burton Stock Car Co.
Cudahy Tank & Refrigerator Line.
Colorado Fuel Co.
Cold Blast Trans Co.
Cupples W. W. Co.
Chicago Refrigerator Car Co.
Canada Cattle Car Co.
Canada Southern Line.
Commercial Express Line.
J. Dold & Son.
Empire Line.
Erie Despatch.
Fall Brook Coal Co.
Hick's Stock Car Co.
Havens C. B. & Co.
Kansas City Refrigerator Car Co.
Kansas City & Mex. Transportation Co.
Keystone Palace Horse Car Co.
Lone Star Brewing Co.
Mann Bros.
Merchants Des. Trans. Co.
Mather H. & S. Car Co.
Midland Line.
National Despatch Line.
New England Car Co.
Pullman Palace Car Co.
Pittsburg & Toledo Dispatch.
Red Line Trans. Co.
W. P. Rend & Co.
St. Charles Car Co.
St. Louis Refrigerator Car Co.
Southern Iron Car Line.
Street's Stable Car Line.
Swifts Refrigerator Trans. Co.
Union Tank Line.
Union Line.
Union Refrigerator Trans. Co.
Waters Pierce Oil Co.
White Line Trans. Co.
White Star Transp. Co.

INSTRUCTIONS FOR ANSWERING QUESTION (80) ON OPPOSITE PAGE.

There should appear on the oppossite page *some notation* to indicate that it has been overlooked.

INSTRUCTIONS APPLYING TO PAGES 82 AND 83.

[FOR USE OF COMMISSION ONLY.]

In complying with the requirements of the Tables on pages 82 and 83, every entry should be clearly and carefully made, *black ink* alone being used. Do *not* use ditto marks (") or "do."

Under the last column heading but one, Table "B," page 83, insert the specific page or pages covered by "Memorrandum of error" made. Under "Subject examined," same table, make brief entry explaining nature of topic examined; similarly, under "Subject," Table "A," specify in brief the topic or topics corrected, as for example, if a correction on page 67 of the Form pertains to "Automatic Coupler" alone, make under "Subject," the entry—Automatic Coupler.

On page 82, under "Answer needed," use check (√) where a reply to letter written is expected; use "No" in other cases. This is *especially important* and should be carefully observed. A letter received pertaining to this report, but not in reply to letter written, should be entered on this page (82) under answer;" and ou the same line, under "Name" of "Officer addressed," should be inserted the word "None." In case any letter received merely acknowledges receipt of letter written, insert a second check (√) under "Answer needed" to indicate there is still lacking a reply to our original letter. When this reply comes to hand, enter on a separate line under "Answer;" and on the same line, under "Name" and "Title" of "Officer addressed" *only*, insert anew the original entries, at the same time crossing out thus $\left(\frac{\sqrt{}}{\sqrt{}}\right)$ the "second check" above mentioned.

In making entry of "Name" of "Clerk making examination," page 83, of "Officer addressed," page 82, of "Officer sending letter or telegram," "Officer of Commission," and "Clerk making correction," page 83, *always* enter the surname first, writing initials of name last, as for example, Smith, J. H., Jones, J. R., etc. Make sure that the surname of every railroad "Officer" is *correctly spelled* and has the *proper initials*.

Under "Title," pages 82 and 83, use abbreviations as follows: Pres., V. P., Sec., Treas., Comp., Asst. Comp., Gen. Aud., Aud., Gen. Man., C. E., Gen. Supt., G. P. A., etc.,

Under "Month," use the following: Jan., Feb., Mar., Apr., May, June, July, Aug., Sept., Oct., Nov., and Dec. Enter the "Year," in full, as for example, 1892, 1893, etc.

EXPLANATORY REMARKS.

(81)

STATE OF .....
COUNTY OF ..... } *ss.*

WE, THE UNDERSIGNED, ..., President,
and, ...,
of the ....., Company,
on our oath do severally say that the foregoing return has been prepared, under our direction, from the original books, papers, and records of said Company; that we have carefully examined the same, and declare the same to be a complete and correct statement of the business and affairs of said Company in respect to each and every matter and thing therein set forth, to the best of our knowledge, information, and belief; and we further say that no deductions were made before stating the gross earnings or receipts herein set forth, except those shown in the foregoing accounts; and that the accounts and figures contained in the foregoing return embrace all of the financial operations of said Company during the period for which said return is made.

.....,
PRESIDENT.
(or other Chief Officer.)

.....,
TREASURER.
(or other Officer in charge of the Accounts.)

SUBSCRIBED AND SWORN TO before me }
this ... day of ..... 189... }

.....,

.....,

(82) CORRESPONDENCE.

[FOR USE OF COMMISSION ONLY.]

Officer Addressed.		Date of						Subject.	Answer Needed.	Date of						Answer.						File Number.	
		Letter			Telegram.					'Attention' Letter			'Attention' Telegram.			Date of Letter			Date of Telegram.				
Name.	Title.	Month.	Day.	Year.	Month.	Day	Year.	Page.		Month.	Day.	Year.	Month.	Day.	Year.	Month.	Day.	Year.	Month.	Day.	Year.	Letter.	Telegram.

MEMORANDA. (83)

[FOR USE OF COMMISSION ONLY.]

A. CORRECTIONS.

Date of Correction.			Page.	Subject.	Authority.								Clerk Making Correction.
					Letter of			Telegram of			Officer Sending Letter or Telegram		Officer of Commission.	
Month.	Day.	Year.			Month.	Day.	Year.	Month.	Day.	Year.	Name.	Title.	Name.	Name.

B. EXAMINATION.

Date of Examination.			Page.	Subject Examined.	Memorandum of Error.	Clerk making Examination.
Month.	Day.	Year.			Page.	Name.

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UNITED STATES OF AMERICA, }
WESTERN DISTRICT OF TEXAS. }

I, B. G. Duval, Clerk of the Circuit Court of the United States, in and for the Western District of Texas, holding its sessions at Austin, Texas, do hereby certify that the above and foregoing is a true and correct copy of the proceedings had in said court in cause numbered 187, on the Equity side of the docket of said court, wherein the Farmers' Loan & Trust Company, Trustee, is Complainant, and the International & Great Northern Railroad Company, Thomas M. Campbell, John H. Reagan, L. L. Foster, William P. McLean and Charles A. Culberson are Defendants,—and the International & Great Northern Railroad Company is Cross-Complainant, and The Farmers' Loan & Trust Company, Thomas M. Campbell, the Railroad Commission of Texas, John H. Reagan, William P. McLean, L. L. Foster, and Charles A. Culberson are Defendants, as the same appears from the files and records of said court now in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office at the City of Austin, in said District, on this, the 18th day of April, in the year of our Lord one thousand eight hundred and ninety-three.

[Seal]

B. G. DUVAL, *Clerk*,
By D. H. HART, *Deputy*.

CIRCUIT COURT, W. D. TEXAS.

August 22, 1892.

Nos. 186-190.

MERCANTILE TRUST CO. *vs.* TEXAS & P. R'Y CO. *et al.* FARMERS' LOAN & TRUST CO. *vs.* INTERNATIONAL & G. N. R. CO. *et al.* MERCANTILE TRUST CO. *vs.* ST. LOUIS S. W. R'Y CO. OF TEXAS *et al.* SAME *vs.* TYLER S. E. R'Y CO. OF TEXAS *et al.* FARMERS' LOAN & TRUST CO. *vs.* GULF, C. & S. F. R'Y CO. *et al.*

McCORMICK, *Circuit Judge:*

A glance at the public history of railroad interests in Texas will help us to see the true state of the issues joined in these suits. With some trifling exceptions near the gulf coast, Texas has no navigable waters. The need of railroads was therefore early felt. When, by the compromise of her claims to the Santa Fé territory, she received a fund which she dedicated to the support of the public free schools, she adopted the policy of loaning this fund to aid in the construction of railroads, taking a first-mortgage lien. She also passed a general law extending donations of land to aid and encourage these necessary highways, and February 7, 1854, she passed a general law providing, among other things:

"It shall be lawful for the legislature at any time to prescribe rates to be charged for the transportation of persons

and property upon any such road should they be deemed too high, and may exercise the same power every ten years: *Provided*, That no reduction shall be made unless the net profits of the company for the previous ten years, the expenditures of the company being *bona fide* and not with a view to defeat the operation of this section, shall amount to a sum equal to 12 per cent. per annum upon its capital stock, and then so as not to reduce the future probable profit below the said per centum."

These enterprises were in a measure suspended during the civil war, but immediately on its close the people of Texas in the constitution adopted in 1866 ordained that—

"A well-regulated system of internal improvement is calculated to develop the resources of the State and promote the happiness and prosperity of her citizens. Therefore the legislature shall have power and it shall be its duty to encourage the same, and the legislature shall have power to guaranty the bonds of railroad companies to any amount, not exceeding in any case the sum of $15,000 per mile."

Operation under this constitution was suspended by the passage of the reconstruction measures in 1867, and the constitution itself was superseded by the new constitution, which went into full effect March 30, 1870. The provision quoted from the constitution of 1866 was not retained in the new constitution. Touching this subject it provides in article 10, § 5:

"All public lands heretofore reserved for the benefit of railroads, or railroad companies, shall hereafter be subject to location and survey by any genuine land certificates."

Section 6:

"The legislature shall not hereafter grant lands to any person or persons, nor shall any certificate of land be sold at the land office, except to actual settlers upon the same, and in lots not exceeding 160 acres."

This was speedily amended so as to authorize the legislature to make grants of land for purposes of internal improvements, not to exceed twenty sections of land for each mile of completed work, in aid of the construction of which land may be granted. Until the 15th of August, 1876, there was in Texas no general law providing for the organization of railroad corporations, and up to that time such corporations could only be created by an act of the legislature.

Upon the complete restoration of our Federal relations in 1870 many active individuals and associated promoters of railroad enterprises pressed their projects on the legislature. The field was new and large and many grants were obtained, some of which were afterwards deemed improvident. In 1871 a general act was passed to authorize counties, cities, and towns to aid in the construction of railroads and other works of internal improvement and the same or like active promoters as those who had solicited the legislature secured donations, loans, or subscriptions to stock to their various projects from many counties, cities, and towns in the State, said aid taking the shape of bonds, as provided for in this act and in subsequent acts. These bonds of the counties, cities, and towns, as well as the bonds of the railroads themselves, were negotiable and came to be held largely by citizens of other States, or by aliens, and, default being made in the payment of interest, much litigation arose thereon and more was imminent in the circuit courts of the United States. Several of the Western States had preceded us in this career of progress, and the bitter controversy, which had ripened into what are popularly called the "*Granger Cases*," was raging and had not been settled by the Supreme Court when the Texas constitutional convention—the third in nine years—met, in 1875.

The constitution then framed, and which, having been adopted, went into effect April 18, 1876, embraced this provision:

"The legislature shall pass laws to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State, and shall, from time to time, pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on said railroads and enforce all such laws by adequate penalties."

In obedience to which the legislature did pass laws establishing maximum rates of charge for transportation of passengers and freight on railroads, and providing that any railroad charging or receiving a greater rate shall forfeit and pay to the party injured thereby a penalty of $500, to be recovered before any court having jurisdiction of the amount, in any county through or into which the passenger or freight may have been transported; which laws are still in force. Several parallel and competing lines of railroad were constructed through the State from south to north and from east to west, with many branches and dependent or independent connecting lines. These all encountered the pecuniary embarrassments incident to the construction and operation of new roads across an undeveloped territory, and nearly all of them at one time or another, and some of them more than once, had to submit to a process of reorganization through the courts. From the very nature of the case and the state of the parties resort was usually had to the United States courts. Receivers were appointed to hold and operate the properties pending the progress of the chancery proceedings; earnings, beyond necessary operating expenses, were concentrated upon much-needed repairs and betterments, and for this purpose, to some extent, earnings were anticipated, and even the *corpus* of the property charged by the issuance of receiver's certificates. On the leading lines the service was conspicuously improved. The bondholder was getting no interest. He was either an alien or was a citizen of another State. Traffic increased. Some

roads completed their reorganization and began to pay interest on their bonds.

Railroad operations began to affect more or less directly every place and every person in the State. Systems of connecting lines were developed. Schedules were observed. The number of officers and employés came to attract attention. Many claims for damages for personal injuries or other causes were made against the roads, which were not allowed, and resort was had to the law courts. There was no law prohibiting champerty in this State (*Beatinck v. Franklin*, 38 Tex., 458), and the rule in suits for damages against railroads was that the attorney for the plaintiff had only a contingent fee, generally a half interest, in the amount he could recover; and in such trials before juries in all the domestic trial courts the argument of counsel assumed that tone of eloquent accusation reasonably to be expected from such conditions. The volume of accusation soon swelled beyond the jury box and the chambers of the courts, and patriotic and ambitious eloquence began to fire the popular heart with its fierce philippics against the greed of associated wealth and of corporate power. The other side was not idle or silent; the contest between the adversary parties waxed warm. The legislature was their Chæronea, where the fight was furious. The legislature appeared to be unequal to the emergency. Congress had established the interstate commission. A dozen or more States had established State commissions. The call here was for a commission. One most eminent lawyer, who commanded universal respect, who had, at a venerable age, retired to a chair in the law school of the State university, doubted the power of the legislature under our existing constitution to establish such a commission. Yielding to this authority, the legislature proposed an amendment to the constitution which was intended to confer that power. Its adoption was at once made a party test by the controlling political party in the State. Candidates for the legis-

lature and for all the State offices were nominated and conducted their canvass with reference to it. Its adoption and its immediate subsequent enforcement was the issue which overshadowed all other issues. At the election held the 5th of November, 1890, it was carried and its friends elected by the usual Texas majority of 100,000 or more.

On the 7th of March, 1887, the Supreme Court had decided the case of *Robbins* vs. *Taxing Dist.*, 120 U. S., 489, 7 Sup. Ct. Rep., 592, holding what is popularly known as the "drummer's tax" to be unconstitutional. A similar tax was being enforced by criminal process against delinquents in this State, and our State court of last resort, on the 22d of June, 1887, in a well-considered opinion, declined to yield its own convictions to the authority of the *Robbins Case*, and refused to enlarge a prisoner held for the non-payment of said tax (*Ex parte Asher*, 23 Tex. App., 662, 5 S. W. Rep., 91). The prisoner sued out a writ of error to the Supreme Court. On the hearing in that Court the present governor, then attorney general, appeared on behalf of the State of Texas, and made an oral argument. The Supreme Court was not able to distinguish the Texas tax from the one involved in the *Robbins Case*, and on the authority of the *Robbins Case* and of *Leloup* vs. *Mobile* (127 U. S., 640, 8 Sup. Ct. Rep., 1380), reversed the judgment of the Texas court and discharged the prisoner (*Asher* vs. *Texas*, 128 U. S., 129, 9 Sup. Ct. Rep., 1). The United States judges in Texas were controlled by the decision in the *Robbins Case* from the time it was announced. On the 24th of March, 1890, the Supreme Court decided the case of *Chicago, M. & St. P. R.* vs. *Minnesota* (134 U. S., 418, 10 Sup. Ct. Rep., 462). On January 13, 1891, the twenty-second legislature met. On the 21st day of that month the governor in his general message addressed them in this language on the subject of "Federal offices:"

"In her independent autonomy Texas should be sovereign and free in the management of her own domestic affairs.

which has under the Constitution and laws of Texas, jurisdiction to hear and render the decision sought to be enjoined.

3rd. That the Commission act of Texas is a valid and constitutional law.

4th. That the basis alleged in the bill and cross-bill to test the reasonableness of rates fixed by the Commission is unjust and inequitable, and the rates as fixed by the Commission and shown by the record are reassable.

Under the first issue the following proposition and sub-proposition of law, with statements from the record in support of them, are submitted:

PROPOSITION.

There being no charge of personal trespass, or liability, and the acts sought to be enjoined, being acts of official discretion under the Constitution and laws of Texas, and the injunction being sought to effect and defeat the exercise of a governmental power, it becomes a suit against the State of Texas and obnoxious to the 11th amendment of the Constitution of the United States.

On page 2 and 3 of the record, the original bill, and on record page 320 the cross-bill shows,

that this suit is brought against John H. Reagan, William P. McLean and L. L. Foster, constituting the Railroad Commission of Texas, and C. A. Culberson, as Attorney-General of the State.

On record pages 36 and 37 and 245 it is shown that the relief sought is to restrain the defendant from performing official duties effecting the powers and functions of the State Government created and required to be performed by constitutional provisions and laws enacted thereunder.

See Constitution of Texas, Art. 10, Sec. 2, Brief p. 1 and 2.

Commission law, Secs. 3, 19, 21, 21 a, Rec. p. 55, 66, 67.

11th Amendment to the Constitution of the United States.

Cunningham vs. Railroad, 109 U. S., 446.

Pennoyer vs. McConnaughy, 140 U. S., pp. 10, 13, 15 and 16.

Allen vs. B. & O. R. R., 114 U. S.

In re Ayers, 123 U. S., 443.

Poindexter vs. Greenhow, 114 U. S., 270.

McGahey vs. Va., 135 U. S., 683.

McWhorter vs. Pensacola & A. R. Co. 5th Southern Reporter 134.

Sub-Proposition, 1.

A suit against the Attorney-General of the State of Texas seeking to enjoin and forbid the future prosecution of suits required by law to be brought in the name of the State is in effect a suit against the State and obnoxious to the 11th amendment of the Constitution of the United States.

Sub-Proposition, 2.

It appearing from the bill that the suits required to be brought by the Attorney-General are criminal actions a court of equity cannot enjoin.

The record shows that section 16 of the Commission law requires that all penalties provided by the act shall be recovered in the name of the State of Texas, by the Attorney General or under his direction, and the fines and penalties recovered shall be paid into the Treasury of the State. (Rec. p. 66.)

Section 2 of the act requires the Commissioners to report all violations of law ta the Attorney-General and to request the institution of the preper proceedings, and have the same promptly prosecuted. (Rec. p. 66.)

The relief sought is to enjoin C. A. Culberson from instituting or authorizing, or directing others to institute any suits or actions against the Railway company, or the Receiver, or for the recovery of any penalties under any of the provisions of the law. (Rec. p. 36.)

The relief granted by the Court was that Charles A. Culberson, as Attorney-General of the State of Texas, and his successors in office be perpetually enjoined, restrained and prohibited from instituting, authorizing or directing any suit or suits, action or actions against the Railroad company for the recovery of any penalties under and by virtue of the provisions or the act approved April the 3rd, 1891, etc.

Iowa vs. Railroad, 37 Fed. Rep., p. 467.

Texas vs. Day, 41 Fed. Rep., p. 228; 49 Fed. Rep. 593.

Weil vs. Calhoun, 23 Fed. Rep., p. 75.

Shess vs. Noble, 31 Fed. Rep., p. 55.

High on Injunctions, Secs. 20, 68, 272, 1244.

Under the second issue ~~was~~ we submitted the following propositions and sub-propositions of law with statements from the record in support of them:

PROPOSITION.

It appearing from the face of the bill that Complainants seek to enjoin the

judgment of a special tribunal of the State of Texas, which has under the Constitution and laws of Texas jurisdiction to render the decision sought to be enjoined from which judgment or decision an appeal has been provided by law for all parties interested and dissatisfied with said judgment or decision; the United States Circuit Court would have no jurisdiction to entertain the bill or grant the relief prayed for.

The bill seeks to enjoin the enforcement of freight charges found to be reasonable and just after due process issued, trial had, and judgment entered by the Commission of the State of Texas, duly appointed with jurisdiction to hear and determine the questions adjudicated.

Record page 12 and 13.

See the judgment of the Commission upon the respective tariffs which are in effect as follows:

"Due and legal notice as provided by the act of April "3rd, 1891, establishing a Railroad Commission and defining "its duties and powers having been given, etc., etc., and the "legally authorized agents and representatives of said Rail-"road company in pursuance of said notice having appeared, "and having fully considered the subject of rates on the "commodity named, etc., etc., do fix and establish the rates "set forth in Tariff No. —, etc., etc."

See Record, pages 69 and 217.

Watson vs. Jones, 13 Well, p. 679.

Peck vs. Jenness, 7 How, 624 and 625.

Dial vs. Reynolds, 96 U. S., 340.

Hames vs. Carpenter, 91 U. S., 254.

Slaughterhouse case, 1 Wood, 21.

Daly vs. Sheriff, 1 Wood, 175.

Sub-Proposition 1.

The Railroad Commission of Texas as organized under the Constitution and laws of Texas, is a Tribunal of special jurisdiction, having within the sphere of its jurisdition, full power to hear, determine and enter its judgment, and it is submiitted, comes within the meaning of a court as used in section 720 of the Revised Statutes of the United States.

STATEMENT UNDER PROPOSITION.

The Constitution of the State of Texas [Art. 5, Sec. 1] vests the judicial power of the State in one Supreme Court, Courts of Civil Appeals, District Courts, County Courts, Commissioners' Court, Justice Courts, and such other Courts as may be pro-

vided by law. Section 2, article 10, of the State Constitution provides for the regulation, and enforcement by penalties, of freight and passenger tariffs on railroads, and to further accomplish these objects, the Legislature is empowered to provide and establish all requisite means and agencies, invested with such powers as may be deemed adequate and advisable.

The Legislature, under these constitutional provisions, organized the Railroad Commission of Texas with the following powers:

1st. To hold sessions for hearing and determining complaints, and fixing rates, and exercising all powers granted [Sec. 2] at any point in the State.

2nd. To provide rules and regulations for its proceedings, and a designated seal for its official purposes. (Sec. 2, Sec. 3 (a).

3rd. To keep full and correct minutes of all transactions and proceedings. (Sec. 2.)

4th. To adopt and enforce rules, regulations, and modes of procedure in hearing and determining complaints against the rules, rates, etc. (Sec. 3 (i).

5th. It is required that before any rates are established that ten days notice be given, to the Railroad to be affected, of the time and and place, when and where, rates are to be fixed. (Sec. 4.)

6th. That the proccess is to be served as in civil cases, and the Railroad company is to be

heard, at such time and place, to the end that justice may be done. (Sec. 4.)

7th. The power to take depositions, issue subpœnas and to enforce attendance of witnesses, and production of evidence, administer oaths, and punish for contempt as fully as is provided by law for District Courts of the State. (Secs. 4 and 13.)

8th. In case there is dissatisfaction with any decision, act, rate, rule, charge, classification or order, (established as provided in section 4) the party dissatisfied may appeal from the decision of the Commissioners, by specifying his cause or causes of objection, in a petition to be filed in a court of competent jurisdiction in Travis county, without reference to terms of court, in which petition the Commission is to be made defendant and if dissatisfied with the court's decision, then an appeal to the Appellate Court having jurisdiction is granted, and the causes thus appealed have precedence over all other causes of a different nature. (Sec. 6.)

9th. It provides that certified copies of rates, as established under previous sections of the law, above set forth to be served on the Railroads, and the same to take effect, at a time to be fixed by the Commission, to be not less than twenty days. (Sec. 8.)

A substantial compliance with the requirements of the act is necessary to give effect to the

classifications, rates, charges, rules, regulations, requirements and orders made by the Commission. [Sec. 20.]

Peck vs. Jenness, 7 How. 612.

Watson vs. Jones, 13 Wall 679.

Hames vs. Carpenter, 91 U. S. 254.

Dial vs. Reynolds, 96 U. S. 340.

Sub-Proposition 2.

It being the settled law of this Court, that the power to regulate freight, etc., on public highways is a governmental power, and the establishment of agencies for that purpose, within the limits of the State is a constitutional right of the State; it is submitted that the State may create a judicial or administrative body, and confer such powers, judicial or otherwise, as will in its discretion best effect the purpose intended.

AUTHORITIES.

Stone vs. Trust Co., 116 U. S. 307; 19 Amer. and Eng. Enc. of Law 686.

State Constitution, section 2, article 10; Brief p.

Sub-Proposition 3.

The State of Texas having under its constitutional provisions, created a tribunal, or special agency, and given to it judicial powers, and functions, its decrees, judgments, findings and decisions, within the scope of its purpose, and the jurisdiction granted, are as conc.usive and effective as Courts of general jurisdiction, and cannot be collaterally questioned in a different tribunal.

STATEMENT.

The Commission law provides [section 20] that no rate or charge is effective without a substantial compliance with the provisions of the act. It provides for ten days notice, of the time and place, when and where, the rate or other order is to be m de, it gives the defendant its day in court under the service of a process as in civil cases, it provides for compulsory process for witnesses and evidence. It provides for a trial, and power to force testimony by punisment for contempt. It provides for certifying the conclusions to the defendant Railway and the time after such certification they are to be enforced; it provides for an appeal from the decision of the Commission without bond, to a court of Travis County having jurisdic-

tion of the amount involvned ad from such court to the proper Appellate Court of the State, without bond.

H. & T. C. R. R. vs. Randolph, 24 Tex. 332.

Williams vs. Ball, 52 Tex. 606.

Johns vs. Smith, 21 Tex. 728.

Bumpas vs. Fisher, 21 Tex. 567.

Guilford vs. Love, 49 Tex. 740.

Watkins vs. Travis, 61 Tex. 415.

Murchison vs. White, 54 Tex. 81.

Smith vs. Waldon, 82 Tex. 547.

Water Works vs. Schottler, 110 U. S. 351.

Sub-Proposition 4.

If a Federal question arises in the processes provided for the fixing of rates by the Commission, the decision of which was necessary to the determination of the cause, it can only be determined by appeal or writ of error from the court of last resort in the State to the Supreme Court of the United States.

Brown vs. Atwell, 92 U. S. 327.

Groos vs. U. S. Mortgage Co., 108 U. S. 477.

Slaughterhouse Case, 1 Woods 21.

In support of the above propositions we submit the following:

ARGUMENT.

The Railroad Commission of Texas is a special tribunal that may have been created and organized under the general powers of the Legislature in the absence of any prohibition in the Constitution of the State; but in this particular instance it is a tribunal authorized both by the 5th article, section 1 and 10th article, section 2 of the State Constitution.

The authority to provide the requisite means and agencies and invested with such powers as may in the discretion of the Legislature be deemed adequate and advisable, to regulate the railroad traffic, correct abuses, and enforce the same by adequate penalties, does not preclude the idea, as has been intimated by distinguished counsel in this case, that the Legislature had the power to organize the Commission into a tribunal under section 1, of article 5 of the State Constition, and there is nothing in the law itself showing that they did not intend to do so.

The powers granted must determine the nature of the tribunal and the intention of the Legislature in creating it, and in this case there is, in our opinion, no room for speculations as to the purpose or intention of the creating power if we but apply to the act the ordinary rules of construction.

If constitutional provisions and laws are to be

expounded in the light of conditions existing when adopted, and in connection with former provisions to be rendered more effective by amendment, or substitution, then we cannot fail to discover the character of the Commission.

For fifteen years laws have been enacted under the first section of article 10 of the Constitution of 1876, and in pursuance of its provisions authorizing the regulation of railroad traffic and preventing abuses. Patient but ineffectual efforts were made to control and regulate the railroads under these laws. If shippers could be found who had the temerity to question the reasonableness of any rate, the facility for delay in the process provided in the ordinary courts would render their efforts barren of results, but if perchance trials were forced, what would be declared reasonable in one locality would be declared unreasonable in another; in other words, the caprice, peculiarities and mental habits of the individuals composing the juries of the land was the crucible fixed in which to test the reasonableness of a rate. The proverbial uncertainty of a jury's verdict as a basis to determine the reasonableness or justice of rates tended to produce the very discriminations and inequalities practiced by the Railroads and to suppress which the laws hurled their thunders in vain.

Under this condition of things the railroads had two sets of rates, one they called their "open rate" the other was a secret rate, depending on the discretion of its managers and commercial agents, thus a

system of operation was built up by them wherein the power was firmly held to condemn to decay, or stimulate to activity, industries erected within the limits of the State, under the belief that they could be operated most economically near the raw material and point of consumption. Suffice it to say, that the laws were impotent to preserve the principle of equality to all, and special privileges to none, which should control railroads as well as goverments.

Under these conditions the people demanded the creation of a tribunal, with powers adequate to suppress these evils and to restore equality to all in the use of the public highways.

The legislature, fresh from the people, and the discussion of the amendment to the Constitution that had been formulated and passed, responded to its command. By reference to the statements made under the propositions above referring to the nature of the tribunal, that the Legislature deemed advisable to create, for the correction of the evils exisiting under the old law, we find a tribunal vested, not with advisory powers, but armed with modes of procedure, which tested by those of other judicial bodies of the State, stamp them as purely judicial, and evince the intention of the Legislature that this tribunal should reach its judgments by the same judicial methods.

A careful analysis of the Commission act will show that Section 4 and its relative clauses is the bed rock upon which the power to regulate, rests. Not

a rate, order, charge, or other act required by the law effecting the material interest of these corporations, can be established, or certified for observance, before the usual process known to judicial bodies has been served on the Railroad, to be effected, and which process was required to be served as in civil cases. The Railroad Company was entitled to be heard, at the time and place, and upon the identical issues contained in the notice. This action must precede every judgment of the Commission effecting the traffic of the road. The railroad must have "ITS DAY IN COURT," armed with all the machinery known to courts of law, for compelling witnesses in their behalf to attend and testify orally, or by depositions. The issue is made, trial had, and judgment pronounced. Again if disatisfied, an appeal is provided for, to try the same issues, and no other, and under the same forms of law as is provided for these tribunals; and thus on the highest Appellate court of the State.

Section 5 of the act, the validity of which will be hereafter presented, gave to the conclusions of this tribunal in certain cases the effect, of judgments of Courts of proper jurisdiction, if not appealed from, as provided by section 6.

Judge Dillon in a brief heretofore filed in this cause, and we presume will be filed in this Court, on page 76, purports, in contesting the judicial character of the Commission, to give the great and essential characteristic of courts of justice, as follows:

1st. There must be Judges appointed or elected.

2nd' There must be some form of pleading creating an issue of law or facts; competent evidence to be admitted under the sanction of an oath, with the right to cross-examine.

3rd. There must be a public trial or hearing, resulting in a judgment.

4th. The inherent power by its own process and machinery to enforce and execute it.

An inspection of the law will show that every detail of his test, is provided in the act, except the power to issue execution.

As to this power, it is respectfully submitted, that the provisions for final process, from this tribunal [Sec. 8] and for the enforcement of its decisions, is in exact harmony with the special jurisdiction, and purpose of its organization.

The limits of its jurisdiction, was to fix the classification of freights and rates of charge, for all matters pertaining to the traffic; its purpose was to fix a "STATUS," which was to be a just standard for determining discriminations and extortions; to force stability of rates; and to fix a basis upon which the penalties provided could be enforced.

In thus fixing a "status," there could be no other final process than the order of the tribunal, declaring its conclusions. There was no process existing, or that could have been devised consistent with the pur-

pose of its organization, and its limited jurisdiction, as set forth above, to make the railroads obey. The tribunal could but fix the standard, and obedience was to be enforced through the same channels that had been devised under former laws, to-wit: the infliction of penalties.

It was not consistent with the duties of this tribunal that jurisdiction to enforce penalties and recover sums of money, should have been given.

1st. Because having fixed the standard, it was more consistent with justice that the courts of "proper jurisdiction," by which is intended jurisdiction over the amounts of money involved, should try the issue of disobedience charged in the suit for the penalty.

2nd. Because, to have demanded this duty of the Commission, necessitating the holding its sessions over 260,000 square miles of territory to hear and determine these suits, would have seriously embarrassed the Court in carrying out the particular purpose of its creation.

Its execution, or "final process," therefore, was the certification of its decision to the railroad affected, which within the time prescribed by the statute became the fixed and only lawful rate of charge.

In the case of the Atlantic Express Company vs. the Washington and W. R. Company, reported in the 16th South Eastern Reporter 393, from North Carolina.

The suit was brought by plaintiff, because of the refusal of defendant to afford proper facilities for carrying on its express business. The case involved in a great measure, the legislation designated for the supervison of Railroad Companies, and the fixing of rates. Shepherd, C. J., in delivering the opinion, says :

"There is no force in the argument that the Legislature "cannot confer judicial powers upon the Commision, as the "Constitution, (Art. 4, Sec. 2), especially authorizes the es- "tablishment of such courts, inferior to the Supreme Court, "as the Legislature may deem proper, and it is to be observ- "ed, that the Commission has been created and constituted a "'Court of record,' with the powers and jurisdiction of a "court of general jurisdiction as to all subjects embraced in "the act creating it. Whether a court having no power to "enforce its judgments fulfills the definition of a court of "record and of general jurisdiction, is unnecessary to be "considered. It is sufficient to say that the Legislature has "the authority to establish inferior courts, and to allot and "distribute its jurisdiction as it may deem proper."

It is true that the Commission act of North Carolina constitutes the Commission "a court," but from a comparison of the Texas act with that of North Carolina, it will be seen that powers, duties, and processes, by which the Commission hear and determine questions of rates, are similar in detail and modes of procedure. The Texas act being more definite and specific in its provision for process.

It is further submitted that in the construction of the Texas Commission, the Legislature had before

it the decision of the Supreme Court of the United States in the Chicago, etc., Railway Company vs. Minnesota 134 U. S., p. 418, (1889), and earnestly sought to avoid the defects for which the law of Minnesota was condemned.

The Minnesota Statute, Section 8, simply required the Railroad Company to file with the Commission copies of its schedules and classifications of rates, etc., and gave to the Commission the power to change the rates and classifications, if deemed unfair, or unreasonable; and to COMPEL the Railroads to adopt such changes. There was no reference to any process, judicial or otherwise, whereby the roads could escape the "ipse dixit" of the Commission.

The rate thus fixed was made conclusive, and in the proceedings by mandamus, provided for compelling obedience to the rate as established, the Supreme Court of Minnesota decided that the rates thus fixed by the Commissson were not simply advisory, nor merely "prima facie," but "final" and "conclusive" as to the issue of fairness and reasonableness. It was this condition of case, upon which this court declared through Mr. Justice Blatchford, page 456, that "being bound by this construction of law, "given to it by the Supreme Court of Minnesota, it "was of the opinion that, so considered, it conflicted "with the 14th Amendment to the Constitution of the "United States.

Two propositions, deduced from these facts,

were clearly and forcibly stated by the court, as follows:

"The question of the reasonableness of a rate or charge "for transportation by a Railroad Company, involving as it "does the element of reasonableness, both as regards to the "Company and as regards to the public, is eminently a "question for 'JUDICIAL INVESTIGATION,' requiring 'DUE PRO-"CESS OF LAW' for its determination."

2nd. That "the deprivation of the power to charge "reasonable rates, in the absence of an investigation by "judicial machinery is depriving the railroad of the lawful "use of its property and obnoxious to the 14th Amendment "to the Constitution of the United States."

These vital propositions to the validity of any law, upon the subject of railroad regulation, were as heretofore stated, before the Legislature of Texas, at the time of the construction and passage of the Texas act. Eminent lawyers, under the light of this supreme judicial authority, earnestly sought to conform the State law to the requirements of the Federal command. Again, the fourteen States of the Union who had at that time organized "regulative" Commissions had, in every instance, required the railroads to file their schedules of rates as fixed by them with the Commissioners, together with their classifications and charges, and changes were to be made by the Commissions as necessity demand it; but unlike the Minnesota law, the judicial machinery, to determine the reasonableness of the rate was provided

in the courts of the State, if the railroad was dissatisfied with the change. In a word, the judicial machinery to test its reasonableness, was provided after the rate was established by the Commission, or, as stated by Judge Jackson in the Kentucky and Indiana Bridge Company vs. Louisville & Nashville Railroad, 37 Federal Reporter, in speaking of the power of the Interstate Commission: "The functions of the Commissions were those of "REFEREES appointed to make investigations, to be "submitted to subsequent judicial investigations." The Legislature of Texas, under the persuasive force of the Minnesota case, and to avoid the semblance of arbitrary power apparent in the Commission laws in other States, **placed its "judicial machinery" where the truth of the matter in controversy, to-wit: the fixing of a reasonable rate, was to be investigated and determined, before being certified to the railroads for observance.**

Section 4 of the Texas act embodies this declaration as follows:

"Before any rate shall be established under this act the "Commission shall give the Railroad company, to be affected "thereby, ten days notice of the time and place, when and "where, the rates shall be fixed, and said Railroad shall be "entitled to be heard at such time and place, to the end that "justice may be done; and it shall have process to enforce "the attendance of its witnesses."

Under section 20 of this act, a substantial compliance with the requirements of the act, is necessary to make the rate, charge, or classification effective. It is apparent from these facts, and terms of law, that the intention of the Legislature was to create a "judicial tribunal," to hear and determine the question of the reasonableness of the rates and classifications before fixing and promulgation. In the light of the clear constitutional authority for the creation of this tribunal, with the special jurisdiction to hear and determine the issues that could arise, between the Public and the Railroads, as to the rates and classifications of freights, we deem it unnecessary in this branch of the case, to make any argument from the many instances of special tribunals, created by Legislatures under their general powers and similar constitutional provisions, for facilitating the administration of public affairs; whose judgments within the sphere of its jurisdiction, are as conclusive as courts of general jurisdiction; and whose methods, whether appointed by the Legislature in conformity to the usual processes of the common law or not, are declared to be due process.

Again, the creation of the Commission by the Texas Legislature giving to it the powers of a judicial tribunal, and to its decisions the effect of a judgment was not experimental in its nature, but there was precedent presented by a nation who held in its grasp the commercial reins of the universe. The best

thought of England after years of experiment and exhaustive investigation into railway methods, recognized its inability to enforce by the ordinary processes of the law either reasonableness of rates or equality in the service to the public, or to prevent unjust discriminations; and the further conclusion was reached as the result of this investigation that any legislation attempting to control the evils then existing would produce greater evils than it would remedy. In the further report of this investigation made July 27, 1882, to the Parliament of Great Britain, it was earnestly recommended that the jurisdiction of the Commission should be extended, and that it be given the power not only "to hear" and "determine," but also to enforce its decisions. The report recognized the necessity for a speedy and inexpensive redress in behalf of the people; it attracted unusual interest and attention, and resulted in the passage by Parliament of "The Railway and Canal Traffic Act" of 1888, granting the powers now held by the Railway Commission of England. These powers are "to hear," "determine," and enforce, and their decisions are made final except as is provided in the Act wherein the right of appeal is given upon all questions of law. The burden of proof is on the Railroad upon issues of reasonableness or unjust discrimination, the other powers and duties are similar to those of the Texas Act, the essential point of difference is the power to enforce their decisions by the English Commission, which power we have heretofore endeavored to show

was irrellevant in determining the nature of the tribunal.

One of the great reasons which lead the English Parliament to adopt a tribunal with judicial powers was a necessity of obtaining immediate or speedy decisions and settlements between the Railways and the public, so as not to delay the moving tide of commercial life which could not be done by means of the ordinary courts. Formal proceedings, stated terms, and great delays, could not keep pace with modern activity, inspired by steam and electricity; in fact the touch of the common law processes was death to commercial enterprise, and to the control of the instrumentalities by which it was facilitated.

Again, the courts of law could not decide or enforce a reasonable rate; they could with the help of the jury say that a rate was or was not unreasonable, and after many, many suits at a great expense and time, it might be possible through many decisions to approximate a reasonable rate, and thus like old Polonius, "by indirection find direction out," but such a slow, indirect process was too obviously inapplicable to the demands of modern business interests. Thus the necessity of a special tribunal always sitting with powers to fix the rates to be charged, and to see that they were obeyed and respected. To this end complaints were heard and grievances redressed through decisions that were conclusive as to the facts found.

Again, it may be observed that the object of giving a hearing to the individual was not so much for his interest as for the interest of the public. The subserving of the private interest of the individual by an expeditious and inexpensive method, and the conclusive force given to the finding of the Commission, were the inducements to the citizen to report violations of the law which perhaps would not have been otherwise discovered. It was apparent that to force the individual grievances into the arena of the ordinary courts under ordinary rules of evidence was but offering inducements to the Railroads to litigate the findings of the Commission upon every matter that had received their consideration and in effect would have suppressed the complaint of the citizen and destroyed the efficiency of the Commission.

The Texas Legislature, influenced by these considerations and under a comprehensive amendment to their constitution authorizing the creation of all such instrumentalities, deemed necessary to insure to the public just and reasonable rates, followed a precedent established by the experience and wisdom of statesmen and merchants of England, and made her Commission a judicial tribunal with power to hear and determine, and gave to its decisions the force of judgments.

Some suggestions were made in the argument below that calling the presiding officers of this body "Commissioners" militated against the idea that

the Legislature intended it to be a judicial body. This suggestion will hardly bear serious consideration.

It is as before said the powers, the process, and machinery generally provided for a hearing and a determination, that gives character to the organization, and not whether the presiding officer be called President, Chairman, Chief Justice, or Commissioner.

It has been further intimated in argument below by the same distinguished counsel that it could not be a court, because judges in Texas under the constitution were required to be elected, and the Commissioners were appointed by the Governor of the State with the advise and consent of the Senate; we simply answer that the judiciary article of the Texas Constitution distinctly enumerates the courts in which the judges are made elected, but in the general power to create inferior courts no method is pointed out for filling the office of the presiding officer, and there is nothing in the Constitution of Texas forbidding the Legislature from prescribing the method of its organization.

But assuming for the argument that under the judicial system of Texas, judges were to be elected, and waiving the power given by the constitution to appoint the agencies in this matter; we submit that the provisions of the law appointing the Com missioners would not militate against the fact that

the tribunal organized was provided with such powers and such judicial machinery as would give to their findings the force and effect of judgments.

Counsel, we presume, urges this objection upon the conclusion of the Circuit Judge in the case of the Bridge Company vs. The Louisville & Nashville R. R. Co., reported in the 37 Fed. Rep. 567. The presumption in that case was that Congress could not organize the Interstate Commission into a court, because of the tenure of office of the Interstate Commissioners being limited to a term of years and which was not in pursuance of the Constitution of the United States providing that judges should hold their offices during good behavior.

In the case of Ward McCallister, Jr., vs. United States, 141 U. S. 174, this Court holds:

> That Congress has full power to create tribunals of justice to determine judicially all issues necessary to the administration of any governmental power, and it has repeatedly done so independent of the ordinary tribunals of justice. The proposition thus announced was upon a consideration of the status of the Territorial Courts of the United States, because of the fact that the terms of the judges was limited. It was held that while they were not courts within the provisions of the judiciary article of the Constitution of the United States, yet they were legislative courts, created under the general powers of Congress, but none the less courts with judicial power over the liberties and properties of the citizen.

To the same effect was the American Insurance

Co. vs. Canton, 1 Pet. 511–546, cited in the McCallister case.

The principle thus announced in these cases, that under the general power of Congress, tribunals can be established to determine judicially issues necessary to a proper administration of governmental powers and functions is equally true of the powers of the Texas Legislature, even in the absence of constistitutional authority.

It is submitted that a tribunal has been established by the State of Texas wherein the railroads are to be heard before any effect is to be given to any conclusions affecting their material interest. It makes but little difference what name it bears, whether Court or Commission, if the exercise of the powers, duties, and functions granted must be preceded by investigation, and judicial machinery has been provided for that investigation, requiring due process of law for its determination. Has the State provided for inquiries, and appeals to its highest courts? is the tests in Pearson vs. Yewdall, 95 U. S. 436, or if the law be followed, could the rights of parties be protected under it as was the test in the case of Kenard vs. Louisiana, 92 U. S. 478; if such be the conclusions as we have endeavored to show, then it follows:

That the tribunal is a judicial one.

If this fact be established, then the judgment, decision, order, or conclusion is as stated in the third minor proposition under this head on page —, as

conclusive as a court of general jurisdiction, and can not be collaterally attacked as sought in Complainant's bill. Upon this latter proposition it is stated in the case of Williams vs. Ball, 52 Texas, p. 606, wherein the question was, the presumption that should be indulged in favor of courts of special jurisdiction, and in which it was said that all the courts of Texas were courts of limited jurisdiction, but those created by authority of express constitutional enactments, with general powers to hear all controversies within their particular sphere, cannot be said to be courts of limited or special jurisdiction within the meaning of the rule that presumption will not be indulged in favor of limited jurisdiction. In the case of Bumpas vs. Fisher, 21 Texas 567, the Court says: It is the tendency of American decisions to liberalize the rule of construction with reference to the acts of inferior courts. Our Probate Courts strictly come under the denomination of special jurisdiction, liberal presumptions are indulged in reference to their judgments and orders, and they cannot be attacked collaterally. In the elaborate opinion of Chief Justice Roberts, in the case of Guilfoad vs. Love, 49 Texas 740, it was held that though our Probate Courts had only limited and special powers, they are, within the division of subjects allotted to them, courts of general jurisdiction, so that their orders made within this scope should be held free from collateral attack. This principle of construction was followed in Murchison vs. White, 54 Texas 81, and in Watkins vs. Davis, 61 Texas

415. This Court as well as the courts of Texas has upheld the conclusiveness of judgments of tribunals of special jurisdiction where the law confides to them to hear and determine certain matters.

Johnson vs. Towsley, 13 Wall, 72.

Marquez vs. Frisbia, 101 U. S., 473.

Lent vs. Tilson, 140 U. S., 316.

Marcy vs. Oswego, 92 U. S., 637.

Quinby vs. Conlan, 104 U. S., 425.

Brown vs. Jackson, 7 Wheat, 218.

Hilton vs. Merrett, 110 U. S., 97.

When jurisdictional facts appear in courts of special jurisdiction, every presumption in favor of its judgment is indulged as though it was a court of general jurisdiction.

Brown on Jurisdiction, page 60.

These rules are invoked as of proper application in this case, and though it may appear because of an irregular exercise of authority by the Commissioners, that their judgment is voidable, yet it would be binding until disaffirmed in a direct proceeding for that purpose in the same court, or by appeal as provided by law.

Harvey vs. Tyler, 2 Wall, 340.

Pearson vs. Burditt, 26 Texas, 157.

IN THE

SUPREME COURT OF THE UNITED STATES

JNO. H. REAGAN, W. P. McLEAN, L. L. FOSTER AND C. A. CULBERSON,
APPELLANTS.

—VS.—

THE FARMER'S LOAN & TRUST COMPANY AND THE INTERNATIONAL & GREAT NORTHERN RAILWAY COMPANY, APPELLEES.

Appeal from the United States Circuit Court, for the Western District of Texas.

HISTORY AND RESULT OF SUIT.

Prior to the adoption of the State Constitution of 1876, the people of Texas deemed it necessary to demand that the Legislature should pass laws to correct abuses and prevent unjust discrimination in freight and passenger tariffs by the railroads of

the State; and to establish from time to time a reasonable maximum of rates with the further power to provide adequate penalties for the enforcement of such laws as should be passed.

In pursuance of this demand the following constitutional provisions were adopted by the convention of 1876:

ARTICLE 10, SEC. 1. "Every Railroad Company shall" have the right to intersect, connect with or cross any other" Railroad; and shall receive and transport each the others" passengers, tonage and cars, loaded or empty, without de-" lay or discrimination, under such regulations as shall be" prescribed by law."

SEC. 2, ART. 10. "Railroads heretofore constructed or "that may hereafter be constructed in this State are hereby "declared public highways and Railroad Companies common "carriers. The Legislature shall pass laws to correct abuses "and prevent unjust discrimination and extortion in the "rates of freights and passenger tariffs on the different "Railroads in this State; and shall from time to time pass "laws establishing reasonable maximum rates of charges for "the transportation of passengers and freight on said Rail-"roads and enforce all such laws by adequate penalties."

"SEC. 3, ART. 12, of the Constitution, declares "The right "to authorize and regulate freights on property devoted to "public use has never been and will never be relinquished "or abandoned by the State, but shall always be under leg-"islative control and depend on legislative authority."

"SEC. 4 of same article requires the Legislature to pro-"vide the mode of proceedure to prevent and punish the de-"manding and receiving of rates not provided by law."

ART. 12 provides that all laws granting the right to demand toll, collect freights, etc., shall at all times be subject to amendment, modification or appeal."

Under head of General Provisions, Sec. 25 provides: "All drawbacks, rebates, etc., are prohibited, and laws to punish same must be passed."

ART. 4 SEC. 22, makes it the duty of the Attorney General of the State to inquire into charter rights and prevent corporations from demanding tolls not authorized by law.

SEC. 17 of the Bill of Rights is as follows, "All privileges and franchises granted by the Legislature or created by its authority shall be subject to the control thereof."

Under these constitutional provisions Railroads were constructed, extended and operated until 1890. The Legislature succeeding the adoption of the Constitution of 1876, provided the laws demanded by these constitutional provisions with such penalties as were deemed adequate to enforce them.

Fourteen years of ineffectual effort to enforce these laws through ordinary processes of the common law demonstrated the necessity of establishing a tribunal through which, 1st, the people could have some voice in the making of rates; 2nd, the interposition of some power where they would not fear to lay their grievances, and where the detection of unjust discrimination could be readily discovered and expeditiously suppressed. During the intervening years between 1876 and 1890 attempt were made to establish a Commission, but in response to what was

deemed a valid objection, to-wit: that no power existed under the Constitution of 1876 to create one, the Legislature of by joint resolution submitted to the people as an amendment to section 2, article 10, above set forth, the following words:

"And to the further accomplishment of these objects and purposes may provide and establish all requisite means and agencies invested with such powers as may be deemed adequate and advisable."

SEC. 2, ART. 10, as thus amended was submitted to the people, declared adopted, and incorporated in the Constitution, December the 19th, 1890.

In 1891 the Twenty-Second Legislature of Texas in pursuance of the provision thus adopted and under the power granted to provide an agency invested with such powers as may be deemed adequate and advisable to correct abuses, and to prevent unjust discrimination, and extortion in the rates of freight and passenger tariffs, and to establish from time to time reasonable maximum rates of charges, for passengers and freight, and to enforce such laws through adequate penalties, did enact a law creating a Railroad Commission entitled:

"An act to establish a Railroad Commission for the "State of Texas, whereby discrimination and extortion in "railroad charges may be prevented, and reasonable freight "and passenger tariffs may be established; to prescribe and "authorize the making of rules and regulations to govern "the Commission and the railroads and afford railroad com-

"panies and other parties adequate remedies. To prescribe "penalties for the violation of the act and rules for its en- "forcement."

The first section of the act provided for the appointment of three Commissioners, also their qualifications and salaries. The second section, among other things, designated the Commission as the "Railroad Commission of Texas;" it provided a seal, and the power to make all needful rules for its government, and for the proceedings; and permitting sessions of the body to be held in any place in the State.

The third section invested the Commission with the power and authority to adopt rates, charges, and regulations to govern and regulate railroad freight and passenger tariffs; the power to correct abuses and to prevent unjust discrimination, and extortion in railroad rates of freight, or passenger tariffs, and to enforce same by having the penalties inflicted through the courts having jurisdiction. This section further provides for classification of freights and amending and altering same and arbitrating differences in the division of freights by connecting lines, and for establishing reasonable and just joint rates passing over connecting lines, all of which are to be put into effect in same manner as originals.

It further provides for the adoption of rules, regulations and modes of procedure; to hear and deter-

mine complaints against classification of rates, rules, regulatations, or other determinations of the Commission:

SEC. 4: Provides that before any rates shall be fixed, notice of time and place, when and where the rates will be fixed, shall be given to the railroads; provides for summoning witnesses and taking testimony and manner of service of process.

SEC. 5: Declares the probative force of the findings of the Commission, by providing, that in suits by the individual shipper against the Railroad, the findings of the Commission shall be held reasonable and just, until found otherwise in a direct action brought in the manner prescribed in sections 6 and 7.

SEC. 6: Provides for appellate proceedings in case the Railroad or individuals are dissatisfied with the findings of the Commission.

SEC. 7: Fixes the burden of the proof on the plaintiff when appealing from the decision of the Commission.

SEC. 8 provides for promulgating the schedule of rates.

SEC. 9: Provides for the adoption of rules and regulations by the Commission, for hearing and determining complaints by persons, firms or corporations, against railroads, after five days' notice, and in case a violation of law by the railroad is found, to assess the damage, and upon failure to satisfy the damage done, or in case the violation is found to be "willful," the Commission is required to institute proceedings in the name of the State to recover the penalty for such violation in Courts of

competent jurisdiction. Either party may require the testimony taken to be reduced to writing in the preliminary hearing before the Commission, which is admissible in evidence, in a suit growing out of the same transaction between the same parties.

SEC. 10: Provides, for inspection of books of railroads by the Commission; and a penalty for refusal to permit inspection as aforesaid.

SEC. 11: Provides, for investigation by the Commission into the cost of construction of railroads in Texas.

SEC. 12: Provides, for issuing blanks with questions calculated to elicit such information from railroads as is necessary to a proper exercise of the powers of the Commission; and provides a penalty for failure to answer the questions. It further requires the Commission to investigate "through rates" of freight on railroads in Texas, and when found to be in violation of the rules and regulations of the "Interstate Commerce law," it is made their duty to report the same to the Interstate Commission.

SEC. 13: Provides, the power to issue process for witnesses in all investigations under the Commission law, and its service by the proper officers of the law. It provides full power to enforce attendance of witnesses by the usual methods of Courts, and the usual power to punish for contempt in case of refusal to answer a legal question.

SEC. 14: Declares that any charge for service in excess of rates fixed by the railroads is "extortion;" and provides a penalty in a sum not less than One Hundred ($100) Dollars nor more than Five Thousand ($5000) Dollars.

SEC. 15: Defines what is "unjust discrimination;" and provides a penalty of not less than Five Hundred ($500) Dollars or more than Five Thousand ($5000) Dollars.

SEC. 16: Provides a penalty for false billing, weight, and classifications, or any device whereby a person is permitted to transport property at less than regular rates.

SEC. 17: Provides that in case a railroad shall cause to be done or fails to do anything forbidden or required by the act to be done, that it shall be liable to the party damaged thereby; and if the violation is a case of "extortion," or "discrimination," it shall in addition be liable to a penalty in a sum not less than One Hundred ($100.00) Dollars nor more than Five Hundred ($500.00) Dollars to be recovered in Court of competent jurisdiction, Provided, that in the suit for the penalty the railroad may show that the act was unintentional and made through mistake of fact.

SECS. 18 and 19: Provide penalties for other wilful violations of the law, and that all penalties provided by the act, except those provided for in section 17, shall be recovered in suits brought in the

name of the State of Texas and in a Court of competent jurisdiction in any County through which the road runs.

SEC. 20: Provides that certified copies of any classifications, rates, rules, or orders shall be admissible in evidence in any suit and sufficient to establish the fact that they are the official act of the Commission.

SEC. 21: Requires the Commission to enforce the laws and promptly prosecute violations through the Attorney-General in the name of the State and giving such suits precedence in all the Courts of the State.

SEC. 22: Limits the application of the law to transportation of freight and passengers between points within the State of Texas.

SEC. 23: Make the Commission law cumulative and does not effect rights or remedies heretofore given by law.

Under this act the defendants John H. Reagan, W. P. McLean and L. L. Foster were duly appointed Commissioners, and as such organized the Railroad Commission of Texas in pursuance of this law on the 10th day of June, 1891. They at once proceeded to exercise the powers and functions conferred upon them. Notice under the provisions of section four was duly issued and served upon the complainant as shown upon page twelve of the record.

In obedience of this notice, the record shows that complainats, both by agent and attorney, appeared at the time and place as required by the notice. Upon proper investigation and the information then and there obtained from the agents and attorneys of complainants as well as from the agents and attorneys of all other railroads in Texas then and there present, in pursuance of like notices served upon them, and after a free, full, and open conference between the Railroad Commission and the agents and attorneys of the railroads aforesaid, the said Commission did proceed to determine what were reasonable rates and charges for the transportation of the commodities mentioned in the notice given and did in pursuance thereof, issue within the time prescribed by the act certain tariffs known as commodity tariffs and numbered one, two and three, as shown by the record pages 71, 72, et seq. That said commodity tariffs before being promulgated were referred to the proper officers of the defendant Railway and all other railways in the State for such objection and criticisms as they should see fit to make. After notice of these tariffs had been given as above stated the same were promulgated and put in force in terms of the law. The Commission did then from day to day, as provided in said notice, determine and fix other commodity tariffs, and did, from day to day and in pursuance of the notice so given, issue its orders, directions, amendments to tariffs, circulars, and revocations, as were necessary to the enforcement of the law, and

the proper management of the railways; for reference to which see record exhibit "C" to the bill of complaint.

As appears from the exhibit referred to, the Commission had issued tariffs upon commodities only, and only upon such of this traffic as was wholly intrastate. Neither the passenger traffic nor classified freights established by the railroads prior to the advent of the Commission (which traffic covered the larger percentage of their revenue) had been disturbed by any act of the Commission; but in the face of these conditions we find on April the 30th, 1892, the complainant and five other railroad corporations of Texas, in combination with various non-resident trust companies, making a concerted movement upon the life of the Commission. The railroads were made joint defendants with the Commission by complainants, who are in each case non-resident corporations. (Rec. p. 262.)

The defendant railways and the railways generally (that had been so "unexpectedly" thrust into company, that heretofore they had been seeking to avoid and evade, began at once to extricate themselves from the position, by their answers admitting without qualification the allegations of the bill, and filing cross-bills adopting, without exception, the allegations of the original bill and every paragraph of its prayer.

Among the suits thus brought against the Commission was the case at bar. The complain-

ant, The Farmers Loan & Trust Company, organized under the laws of New York, on the 30th day of April, 1892, filed its bill against the International & Great Northern Railway Company, a corporation organized under the laws of Texas, Thomas M. Campbell, a citizen of Texas, Receiver of the said Railway corporation, also, against John H. Reagan, W. P. McLean and L. L. Foster, citizens of Texas and constituting the Railroad Commission of Texas, and Charles A. Culberson, Attorney-General of the State of Texas. Complainants set up that in pursuance of the powers conferred upon the International & Great Northern Railroad Company by its charter and the laws of the State of Texas, the said Railway company did on the 15th day of June, 1881, and at various times thereafter issue its second mortgage bonds aggregating the sum of $7,054,000 and to secure which it executed a deed of trust conveying and transferring to complainants, as trustee, the lines of said railway, its properties, rights, and franchises together with the tolls, fares, freights, rents, incomes, issues and profits. That said second mortgage is subordinate and inferior to other liens securing the payment of other sums of money due by said Railway company to-wit: $7,954,000 issued November 1, 1879, and known as ~~second~~ third mortgage ~~income~~ bonds. Said bill sets up the Commission act of Texas which is attached as exhibit "B." It particularly sets out sections 4, 5, 6, 7 and 8, together with the penalty

clauses in sections 14, 17, 18 and 19 upon which the stress of their complaint is laid and the unconstitutionality and invalidity of the Commission act is based. The complainant then proceeds to lay down its constitutional objection to the acts of the Commissioners under the law as well as to the law itself, as follows:

1st. The notice to the defendant, the I. & G. N. R. R. Co., given by the Commission, of the time and place of fixing rates was not such as was contemplated by the law. See record pages 13, 14, 15, 16, 17.

2nd. That the defendant, the I. & G. N. R. R. Co., will, under the penalties provided by the law, be compelled to adopt the schedules formulated under the Commission under this notice if not restrained.

3rd. That the rates so promulgated are unfair, unjust, and unreasonable, and can not be enforced without serious and irreparable loss to the Railway company, and serious injury to the property, rights and interests of complainants and the beneficiaries in the trust. That the enforcement of the rates would, as near as can be estimated, result in a diminution of revenues aggregating more than $200,000 per annum, thus preventing the payment of the interest on prior obligations as well as the bonds in which complainant are interested. That such reduction will effect the value of the rail-

way properties, as well as a reduction in earnings, thereby impairing, taking, and destroying the Railway company's property therein, and to that extent the investment in the second mortgage bonds; all of which is summed up as "a deprivation of property without due process of law," contrary to the constitution and laws of the United States and the State of Texas.

4th. It is averred that the first and second mortgage bonds and stock capitalization of the Railroad company, afterwards stated to be $9,755,000, represented the actual cost to said company of the construction, and equipment of said railway, and the reasonable value thereof, and upon which said company is entitled to earn interest and dividends; and that said Commission could not reasonably or lawfully establish rates restricting the earnings below these requirements. [Rec. p. 21.]

5th. That the rates promulgated by the defendant Railway company prior to the Commission were not unreasonably high, and were insufficient to meet interest upon its bonds, and any reduction by the Commission would be unreasonable, and unjust, and would be appropriation to the use of others, of a portion of the capital invested by the beneficiaries of complainant's trust, without due process of law, or adequate compensation, in violation of section 1, article 14, of amendments to the Constitution of the United States, and the Constitution of Texas;

6th. That the rates fixed by the Commission affect interstate business of said Railway company, and serious and irreparable reduction of revenue from this source would be caused. [Rec. p. 28.]

7th. That the Commission by issuing Circular 34, referred to in exhibit "C," (Rec. p. 134) requires defendant Railway company, unless restrained by the Court, to deliver on demand of the owner of any freight, the car containing said freight, to any other connecting road, to be transported to any point off the line of said defendant company as my be designated by the owner. That the cars of said company may thus be taken without further compensation than a rental fixed by the Commission, and further, that under said circular the defendant company is compelled to receive cars from other roads under similar circumstances, and that the order requires the switching service necessary for these deliveries to be made without compensation contrary to section 1, art. 14 of the amendments to the Constitution of the United States and of the Constitution of Texas.

8th. That the ulterior purpose of the Commission was by said order to regulate interstate commerce, contrary to the Constitution of the United States, Art. 1, Sec. 8, and the act of Congress, approved February the 4th, 1887. [Rec. p. 30.]

9th. The bill avers that section 5 of the Commission Act of Texas in so far as it provides, that in all actions between private parties and Railway

companies brought under said law, the rates, charges, orders, rules, regulations and classifications prescribed by said Commission before the institution of said action shall be held conclusive, and deemed and accepted to be reasonable, fair and just, and in such respects shall not be controverted until finally found otherwise, in a direct action brought for that purpose, in the manner prescribed by sections 6 and 7 is in controvention of laws of the United States and of the State of Texas, in: That it deprives the defendant corporation of its property, without due process of law, by subjecting it to the penalties fixed in section 17 of the Commission law without lawful defense. 2nd. That it deprives the defendant corporation of the right of trial by jury contrary to the constitution of Texas (Sec. 15, Art. 1).

10th. It is further averred that sections 6 and 7 of the Commission law are void because contrary to section 1, article 14 of the amendments to the Constitution of the United States, and sections 17 and 19 of the State constitution; in this, that, 1st, they withdraw from the defendant company the right to make the defense the unreasonableness of the rate fixed, and limits that issue to an affirmative proceeding directly instituted for that purpose, in a single local court.

2nd. That the defendant company is deprived of the right to make a lawful defense under settled

rules of evidence in suits against it by individuals.

3rd. That it is deprived of the equal protection of the laws, and deprived of its property without due process of law.

4th. That the Court of Travis County, appointed under the 6th and 7th sections of the act, as the proper jurisdiction to which an appeal may be taken by anyone, in case of dissatisfaction with the rates as fixed by the Commission, is not a court of competent jurisdiction, because to confer such jurisdiction is contrary to Art. 5 of the Constitution of the State of Texas.

11th. It is averred that if the Court of Travis County is a court of competent jurisdiction, as provided in the act, that the remedy provided is wholly inadequate, because, the trial and appeal may extend over a great length of time, during which time, the defendant corporation and the beneficiaries of the trust may suffer irreparable loss and injury in the enforcement of the rates appealed from.

12th. That the penalties prescribed by the Commission act are unreasonable and excessive; that the enforcement of the penalties would result in serious loss and damage and possibly bankruptcy to Railroad companies, and is in this respect contrary to the Constitution of Texas.

13th. The bill avers the jurisdictional grounds to be:

1st. A request by second mortgage bondholders to the Trustees to bring the suit.

2nd. A demand on the Receiver of the defendant Railway company to refuse to enforce the rates fixed by the Commission, and his refusal to accede to request.

3rd. That the matter in dispute exceeds Five Thousand ($5,000.00) Dollars.

4th. That it is a cause arising under the constitution and laws of the United States, to-wit: Under Sec. 10 Art. 2, of the Constitution and Sec. 1 of Art. 14 of amendments to the Constitution of the United States.

5th. Diversity of citizenship.

6th. For the reasons above specified complainants and cross-complainants allege generally, that the Commission act is unconstitutional and void, and therefore pray:

1st. For an injunction restraining the Receiver and the defendant corporation from enforcing the Commission rates and etc.

2nd. For an injunction restraining Reagan, McLean, and Foster and Charles A. Culberson, the Attorney-General, from instituting suits, or authorizing or directing them to be instituted for violation of the law by said Receiver or defendant company.

3rd. For an injunction restraining all other individuals, persons or corporations now, or hereafter

claiming any right under and by virtue of said Commission law, or said tariffs, or either, or both combined, from instituting any suits against the defendant company or the Receiver for the recovery of any damages, overcharges, or penalties under said Commission law.

4th. For an injunction against said Commissioners or either of them from making, issuing, or delivering to the defendant company or the Receiver or causing to be delivered any further tariffs, circulars or orders under the Commission law of Texas.

5th. For a temporary injunction during the pendency of the suit, and for a perpetual injunction on final hearing.

6th. For a cancellation of all tariffs, orders, etc., heretofore issued and a mandatory injunction commanding the Commissioners to recall what had been issued.

On June 18th, 1892, the International & Great Northern Railway Company filed its answer admitting all the allegations of the bill and further filed its cross-bill making as defendants thereto, the Farmers Loan & Trust Company and T. M. Campbell, and the Railroad Commission of Texas, John H. Reagan, W. P. McLean, L. L. Foster, constituting the said Commission, and Charles A. Culberson, a citizen of Texas, Attorney-General, and admitting that in addition to its bonded indebtedness it had outstanding a stock issue of Nine Million Seven Hundred and

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Fifty-five Thousand ($9,755,000) Dollars, which was the fair value of the property.

2nd. That for three years all of its earnings had been applied by the Receiver to the operation of said railway, and the renewal, improvement, and equipment of said property. That the stockholders have never received a dividend. That the holders of the first mortgage bonds have accepted, for one-half of the accrued amount on the bonds, certificates of indebtedness bearing interest at five per cent. That holders of second mortgage bonds have consented to fund past due interest in the sum of One Million Two Hundred and Fifty Thousand ($1,250,000) Dollars into deferred third mortgage bonds bearing four per cent interest, payable only out of net earnings during the period of six years and after that absolutely.

It is further averred [Rec. p. 244] that the mortgage bonds were issued under the charter rights, and it was not competent for the Legislature of the State of Texas, through any agency whatever, to fix and establish such rates as to effect or diminish the earnings and revenues of the properties, and its ability to earn interest and compensation for the services performed by it; wherefore it says that the Commission act, is void because violative of the rights under its charter. Further than this all the allegations of the original bill together with the prayer for relief are reiterated, and the same constitutional objections to the acts of the Commission under the law as well as to the law itself are pressed by the cross-bill.

In August, 1892, this case with five others [Rec. p. 262] came up to be heard upon the bills, cross-bills and answers thereto with supporting affidavits before the Hon. A. P. McCormick upon the application for a preliminary injunction in accordance with the prayers of the original and cross-bill; and upon hearing, all that was asked was granted, and the power of the State Administration to enforce the law completely paralyzed.

On March 23rd, 1893, this cause with others shown upon record [page 262] come on for final hearing before the Hon. A. P. McCormick, and upon application of the Railroad Commissioners and C. A. Culberson, the answers that had been heretofore filed by them were withdrawn by leave of the Court [Rec. p. 263] and cross-bills permitted to be filed to the bill and cross-bill. Permission was at the same time granted to Complainants and Cross Complainants to amend their bills, whereupon in addition to an enlargement of the allegations of the bill and cross-bill they added to paragraph 14 of the original bill and to paragraph 7 of the cross-bill the following:

"That on February the 4th, 1851, an act was passed by the Legislature of Texas providing:

1st. That railroads then and hereafter to be incorporated should have the powers and privileges and should be subject to the liabilities and provisions of the act.

2nd. That the Legislature at any time could prescribe rates to be charged on Railroads if deemed too high, and may exercise the power every ten years; provided no reduc-

tion could be made unless the net profits (the operation being honest) for the previous ten years should amount to 12 per cent upon the capital stock and future probable profits were not to be reduced below said percentage.

"That the defendant railway with the exception of two hundred miles was incorporated and constructed while said act was in effect, the same not having been appealed until 1879, when it was omitted by the Commission who compiled the revised code of the State of Texas. That said act formed a part of the charter contract between said corporation and the State of Texas."

The defendants, the Railroad Commission and the Attorney General, at once filed demurrers to the bill and cross-bill, and the amendment thereto:

1st. A general demurrer.

2nd. Fifteen specific causes of demurrer were alleged as shown. [Rec. pp. 265-268].

The demurrers were submitted and overruled, and the Court entered in the case at bar as well as the other cases submitted, substantially the following decree:

1st. That the demurrers be overruled.

2nd. That the injunction issued on the preliminary hearing be made perpetual.

3rd. That the International Railway company be perpetually enjoined and prohibited from putting in effect the tariffs of the Railroad Commission of Texas, as described in the bill and set forth in exhibit "C" and from changing the rates specified.

4th. That Reagan, McLean and Foster, Commissioners, and their successors, and C. A. Culberson, Attorney-General, and his successors, be perpetually enjoined and prohibited from instituting or directing any suit or action against the defendant Railway company to recover penalties prescribed by the act set forth in the bill, and that the Commission be perpetually enjoined and forbidden from certifying any copies of orders, tariffs or circulars to the Attorney-General or any other party, or from furnishing the Attorney-General with any other information enabling him to prosecute a suit under the act.

5th. That the Commission be perpetually enjoined and prohibited from making, issuing or delivering to the Railroad company any further tariffs or circulars or orders.

6th. That all persons, individuals and corporations be and are hereby perpetually enjoined and prohibited from prosecuting suits and recovering penalties under or by virtue of said act or the tariffs, orders or circulars of said Commission or any or either of them, or under and by virtue of said act.

7th. It was further adjudged that all rates, tariffs, circulars and orders heretofore made by the Railroad Commission and described in exhibit "C" are declared unreasonable, unjust and unfair and are hereby cancelled, etc.

From this decree the defendants, John H. Reagan, W. P. McLean and L. L. Foster, constituting

the Railway Commission of Texas, and Charles A. Culberson, Attorney-General of the State of Texas, appealed to the Supreme Court of the United States.

It will be observed in the record and from the foregoing statement of the case that the constitutional objections raised by Complainants and Cross Complainants, and upon which they base their prayer for the extraordinary relief granted to them are of a two-fold nature and as follows:

Sections 7, 8, 9, 10, 11 and 12 of the bill [Rec. pp. 12 to 31] are mere declarations that the discretionary acts of the Railroad Commissioners under the law have produced results which are deemed in contravention of section 1, article 14, of the amendments to the Constitution of the United States.

On the other hand, sections 13 and 14 of the original bill, and adopted by the cross-bill, assailed the act itself as being unconstitutional for the reasons therein set forth and hereafter to be particularly referred to.

We invite the attention of the Court to such of the issues raised by the demurrers, which we desire to present and upon which we rely:

1st. That the suit is against the State of Texas and obnoxious to the 11th amendment to the Constitution of the United States.

2nd. That the bill seeks to enjoin the judgment of a special tribunal of the State of Texas,

Cordially and with pride she claims and feels an interest in the Federal Union, as one of its important members. In all the powers delegated to it she cheerfully joins, to the end that the General Government may be honored and respected within its legitimate sphere. In the administration of her own affairs she expects and demands recognition and respect. For many years past the people have been terrorized by the judicial arm of that Government, not for offenses they have committed, but because they dread the menace of arbitrary power that so often threatens their liberties. Removed so far from the seat of Government, it is difficult for the highest officers and courts to fully understand the frequent outrages inflicted upon the innocent people of this State by inferior officers and the subordinate Federal judiciary. * * * The gracious writ of *habeas corpus* has been abused more than one time by a Federal judge to obstruct the collection of State revenues or in releasing citizens held in obedience to the orders or warrants of State courts, whose rights could have been asserted through the regular channels of the State judiciary. Some of the railroads have been placed and held in the hands of receivers long beyond the term prescribed by our State laws, and occasionally are operated by non-resident receivers under the orders of Federal judges in other States. With respect to such property the decrees and opinions of the State's highest courts are held for naught and in contempt, to the injury of the citizens and the humiliation of the people. Several of these roads, without foreclosure proceedings, have been permitted to increase their incumbrances to the detriment of the public and lawful creditors without check or hindrance, and from all appearances, to an ordinary citizen or skillful observer, as he learns of the exorbitant fees and salaries paid to useless officers in the apparent indulgence of favoritism and nepotism, the connection of the judges and officers with the receiverships and roads would demand investigation. * * * Honorable exceptions to all such misconduct among Federal officers exist in this State. They are well known and fully appreciated by the public. In view, however, * * * of the peculiar conditions surrounding the railway management of the State, and of the utter indifference that seems to have been shown by some of them to the State and her courts and officers in the administration of public affairs, the time has doubtless come when duty would impel action

on the part of the State at her own expense to have all such matters investigated to the end that the guilty may be exposed and punished, and all stains created by such suspicions removed from the innocent. The citizen would be helpless in a contest with such officers, but the State is amply able to enter into it and stand the cost. If wrongs have been done by any Federal officer to the dignity of our State there are tribunals before which he can be carried and justice suitably administered to him. In view of the premises, your honorable bodies are respectfully requested to place a suitable appropriation at the command of the executive for use in defraying the expenses of all necessary prosecutions in the protection of her rights in all respects as a sovereign State."

House Jour. 22d Leg. Tex., pp. 114, 115.

The railroad commission law, set out in full in the margin, was enacted and approved April 3, 1891.[1]

The original bills in these suits were filed on the 30th of April, 1892, and notice given that complainants would present their motions for hearing before me at Dallas, Texas, on the 16th of May, 1892. Before the day set for hearing arrived, I advised counsel that I could not hear the motions at Dallas on the 16th of May, but would hear them at New Orleans, where I would have the aid of the senior circuit judge, on the 23d of May. At the solicitation of the defendant the attorney general, the time for the hearing was postponed, and the motions reset to be heard at New Orleans on the 23d of June, and again at his request a further postponement was allowed and the hearing set for July 20th, at Dallas, Texas, at which last-named date and place the hearing began and continued from day to day until and including the 30th of July.

Nine eminent lawyers of distinguished reputation for ability and learning, each of whom showed a complete mastery of the essential features of the whole record, and a

[1] See note at end of case.

minute and perfect knowledge of the details of the part to which he specially addressed his argument, were heard without limit. The record is large—bills, answers, exhibits, affidavits, a burden for two strong men, I observed, when it was brought to me. The learning of the legal profession was exhausted in the citations of authority and the reasoning of the experienced and skillful solicitors. I was specially requested to consult and carefully consider the references to over 50 volumes, which were furnished me with the record. The gravity of the case must tax the faculties of a single judge, and the responsibility of correctly weighing it might well appall his perceptions and judgment, but for the fact, alluded to by the attorney general when he said, in his oral argument, "this case will go to the Supreme Court."

The most vital question involved has, from the 19th day of June, 1215 (we need not go beyond that date), engaged the supreme attention of English-speaking people. The principle underlying it is the bedrock of our civilization, older and stronger than our written constitutions, State or National, but well expressed in both. Its application to issues similar to those here made has been so fully considered of late years by the Supreme Court, and so elaborately discussed in their opinions as to forbid anything more than a reference to their latest decisions.

As stated in the brief of one of their counsel, the two trust companies, complainants, are trustees of various mortgages executed by the several defendant railway companies to secure bonds issued by those companies respectively. The individual defendants are Reagan, McLean, and Foster, who were appointed and qualified as commissioners in the manner prescribed in section 1 of the Texas railroad commission act. These defendants organized the said commission on the 10th of June, 1891, from which date they have assumed to be and to act as the railroad commission of Texas and are exercising and claiming to exercise all the powers

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and functions conferred or purporting to be conferred by the said act upon the said railroad commission. They have established and undertaken to enforce in respect of all the defendant railway companies such rules and rates and have made and are enforcing the other orders as set forth in the bills of complaint and Exhibit C, thereto attached.

The defendant railway companies have filed cross-bills in the several cases. The bills and cross-bills raise substantially the same questions. One ground for relief presented by the bills is—

"That the tariffs, schedules, and orders of the commission, viewed as laws enacted under the power delegated by the legislature, are unconstitutional and void, because the tariffs, schedules, and orders established by the commission complained of in the bills of complaint are unreasonably low and confiscatory."

Another ground is:

"The railroad-commission act of the legislature of Texas, in the respects complained of in the bills of complaint, is unconstitutional and void, because (1) it purports to confer upon the commission power and authority to establish the tariffs, schedules, and orders above recited. (2.) It denies to railway companies the right in suits for damages and penalties denounced by the act to interpose the defense that the tariffs, schedules, or orders of the commission with respect to the violation of which said damages or penalties may be claimed are unreasonable and void, and in such suits it denies to the railway companies the right to a judicial inquiry in this behalf, thereby denying to railway companies subject to the act the equal protection of the laws and subjecting them to conditions under which they are deprived of their property without due process of law."

The relief prayed in these motions is a temporary injunction, until the hearing against the railway company, from putting or continuing in effect the tariffs, circulars, or orders of the commission, and restraining the defendants constituting the commission and the defendant Culberson and all

other persons from instituting or causing to be instituted suits contemplated by the act for the enforcement of any claims arising out of its provisions or out of any of the tariffs, circulars, and orders prescribed by the commission, and enjoining the commission from making or delivering to the railway companies any further tariffs, circulars, or orders.

The contentions of the defendants Reagan, McLean, and Foster and Culberson, as far as deemed material to notice, are (1) that the bills do not show the right of the complainants to sue; (2) that the suits are believed to be collusive and preagreed as to the defendant railway company; (3) that as to these defendants the suits are really against the State.

It is apparent from the whole record and the conduct of this hearing that the controversy is not between complainants and the railways, but between the railways and the other defendants. The bills of complainants and the answer and cross-bills of the railways and the arguments of their counsel show that there is no such element of collusion in these cases as can prejudice the rights of complainants to sue. The cases cited and pressed by counsel for defendants on this point are plainly different from the cases here. The complainants here show equitable interest in the fair earnings of the roads. They show actual ownership and possession of the mortgage securities of the roads, both of which, they allege, are being irreparably injured and threatened with destruction by the defendants. They show that the railways are willing and want to meet all their obligations as mortgagors in possession, but that said railways are coerced by the defendants, armed with the railroad-commission act, and the directors cannot exercise their judgment and discharge their duty as they should and would but for said coercion.

It may be that the railway companies could, under section 6 of the railroad-commission law, or without the au-

thority of that section, have brought these suits and obtained all the relief to which the complainants are entitled against the other defendants, or it may be that they could not. If they could not, that would only be one additional reason why the complainants should sue; and, if the railways could have so sued, that would be no reason for denying the complainants any right, even if, as seems to be hinted rather than charged, the railways could only have resorted to the State courts, and that there was a previous understanding between the complainants and the railways that the relief complainants desired and believed themselves entitled to receive would be more likely to be speedily and adequately extended in the national courts. It was to meet such cases that the national courts were established. In them parties "may hope to escape the local influences which sometimes disturb the even flow of justice." *Davis* vs. *Gray*, 16 Wall., 221.

What has already been said expresses sufficiently my view as to the suggestion, and the authority in its support, that the injury inflicted and threatened, if any, was done and directed to the mortgagor in possession, and is too remote to give the complainants the right to sue. It may be conceded that there is no express decision of the Supreme Court or of other courts of authority on this question, but as to this point the case of *Peik* vs. *Railway Co.*, in 94 U. S., 164, is substantially the same as these cases. That case was strongly controverted. Lawyers of the highest national reputation argued it elaborately and at great length in the Supreme Court. The same question was involved in the case of *Stone* vs. *Trust Co.*, 116 U. S., 307, 6 Sup. Ct. Rep., 334, 388, 1191; and, while the failure to raise or notice this question in the progress and decision of those cases prevents their being relied on as authority on this point, the fact that it was not raised or noticed is persuasive in the direction of the inclination of my judgment in this case that complainants show

a right to sue. The case of *Murdock* vs. *Woodson* persuades to the same conclusion. 2 Dill., 188 *et seq.*

As to the contention that these are suits against the State, it seems clear to me that the latest decisions of the Supreme Court settle that question against the defendants. In *Ex parte Young* vs. *McConaughy*, 140 U. S., 1, 11 Sup. Ct. Rep., 699, the construction and application of the eleventh amendment is fully discussed, the earlier decisions reviewed, their doctrine extracted, and the line clearly marked between those cases against State officers which are suits against the State in the sense of that amendment and those which are not, and these cases come plainly within the latter class. As suggested to the counsel at the hearing, we cannot reason against the authority of the Supreme Court nor give it additional weight by our indorsement or argument. Where, as in the case last cited, that court has construed the earlier cases and announced the rule, the limit of our office is to arrive at the right in the cases on trial by that rule, and it appears to me not to admit of question that, on the authority of that case, these are not suits against the State within the meaning of the eleventh amendment.

We come now to consider, have the complainants made out their case? Are the rates being enforced against the railways unreasonably low and confiscatory? Is their property being taken or threatened with being taken without due process of law, or are they denied the equal protection of the laws? And, if so, what measure of relief, if any, can this court now extend to the original and cross-complainants?

From the sworn pleadings, the exhibits, affidavits, and unquestioned statements of honorable counsel conversant with the facts made during the argument in open court on the hearing of these motions, I draw my conclusions of fact touching the matters now deemed material. On these essential issues the complainants and cross-complainants have offered the affidavits of the present or former chief

officers and employés of the companies—witnesses most conversant with the facts, and with regard to many of whom the defendant, the attorney general, in his able oral argument, was candid enough and generous enough to say: "I know them; they are respectable gentlemen, of high character, who would not and could not willfully make a false statement."

In the race to occupy territory or to avail of the State's donations of land or to get a basis for the issuance and placing of their bonds or to meet the crying want of communities along their projected lines, or for one or more or all of these considerations, the defendant railways hurried the construction of their lines and opened them for business in a green and unfinished condition, with unseasoned road-beds, ties, rails, culverts and bridges, and rolling stock not adequate to move or bear the weight of their present traffic and with very little terminal and way-station equipment; that in large sections of the State through which these railways pass the most fertile, fully occupied and developed, and furnishing the bulk of their domestic freight and passenger traffic, the character of the soil is such as renders it extremely difficult and expensive to construct and to maintain a sound road-bed and keep the ties on top of it, time and use and constant large additions to the dump being required, and these not always efficient; that the cost of construction and equipment up to the time when these roads were respectively opened for business was far short of the proper cost of their plant as it exists today; that this proper cost of their plant as it exists today exceeds, in the case of each of these railways, the amount of its bonded indebtedness; that these roads could be duplicated only by going through a similar process of seasoning, and that even with the present reduced market value of much of the construction and equipment material and the advantages of transportation of the same to interior points, which existing roads would furnish, such duplicates, with equal right of

way, road-bed, track, rolling stock, terminal and way-station facilities, could not be acquired and constructed now for less money than these roads have cost; that the earnings of these roads have not been diverted to improper uses; that their regular rates for passengers have been the maximum allowed by statute, and they have charged and received for the carriage of freight, within the maximum allowed by law, such rates as the commercial and competitive conditions would permit and the particular commodity would bear; that said rates have always been much lower than rates and charges for like transportation of like articles prior to the opening of said roads; that none of these railways, except the Gulf Company, and it only once eight years ago, has ever paid any dividend on its stock. Four of these railways have had to submit to the process of reorganization under foreclosure proceedings, two of them the second time, and the Gulf Company, which has so far escaped this ordeal, "now owes a floating debt, including unpaid interest coupons, of upward of $3,300,000."

I adopt from the brief of complainants' counsel this statement, which I have found to be accurate:

"With inconsiderable exceptions, not resulting in increased revenues, the commission has reduced every tariff which it touched. The facts established by the proof in each case may be thus summarized:

"*The Texas & Pacific Case.*

"(1.) The rates fixed by the operation of prevailing commercial and competitive conditions and in effect at the time when the series of reductions inaugurated by the commission was commenced were so low and inadequate that this company, after the payment of the expenses of operation and repairs and the cost of necessary betterments and equipment, was unable to earn more than the interest on its prior and fixed mortgage indebtedness, namely, 5 per cent. on an indebtedness of $17,182.60 per mile of road operated, equivalent to 6 per cent. on only $14,318.50 per mile of road oper-

ated. These earnings excluded the possibility of payment of interest on the company's second-mortgage income bonds or of any dividend on its stock.

"(2.) The actual loss to defendant from the application of the commission's rates to the volume of business transacted from the time when these rates were declared to be effective until the 31st day of March, 1892 (about seven months), has aggregated the sum of $212,721.61, the entire loss being in net revenue. The property of this company was in the hands of receivers during the years 1885–1888 in suits to foreclose its mortgages and was restored to the company in the latter year after a reorganization of its indebtedness involving heavy losses to its security-holders and a substantial reduction of its fixed charges. Its stockholders were compelled to contribute an assessment of 10 per cent. upon the par value of their stock, aggregating about $3,000,000. This amount—this new capital—was expended upon the property in its improvement, betterment, reconstruction, and equipment, and the necessary cost of reorganization.

"*The Cotton-belt Cases.*

"(St. Louis Southwestern of Texas and Tyler Southeastern.)

"(1.) These companies did not take possession of their respective properties until June 1, 1891, and hence the rates prevailing prior to the announcement of the commission's tariffs affected them only during the light summer months of June, July, and August, and a part of the month of September, 1891.

"(2.) Under the rates established by the railroad commission these companies are not able to earn necessary operating expenses. The earnings of the St. Louis Southwestern of Texas for the eleven months ending April 30, 1892, fell short of providing for necessary expenses of operation by the sum of $29,172.66. The earnings of the Tyler Southeastern Company for the same period fell short of providing for necessary expenses of operation by the sum of $43,851.99. Both of these companies have been compelled to borrow money to cover the deficit in their earnings to meet operating expenses, and to provide for the interest on their fixed mortgage obligations. The St. Louis Southwestern of Texas owes a floating debt of over $275,000 and the Tyler South-

eastern of over $43,000, incurred for these purposes. The properties of these companies were purchased by them in the early part of 1891 upon sales under suits to foreclose the mortgages of their predecessor companies, the St. Louis, Arkansas & Texas Railway Company of Texas and the Kansas & Gulf Short Line. The new companies were organized on a basis of largely decreased fixed charges.

"*The International and Great Northern Cases.*

"(1.) The rates fixed by the operation of commercial and competitive conditions, and in effect at the time when the series of reductions inaugurated by the commission was commenced, were so low and inadequate that this company, after the payment of the expenses of operation, was unable to earn the interest upon either class of its bonds. For the year ending December 31, 1891, its net or surplus earnings amounted to $443,637, or $34,003 less than the interest charge upon its first-mortgage bonds. These net earnings would only suffice to pay an interest charge of 6 per cent. upon $9,540.67 per mile of road owned and operated by the company. For the three months ending March 31, 1892, the necessary operating expenses of the road exceeded its earnings by the sum of $80,109.09.

"(2.) The actual loss to this railroad from the application of the commission's rates to the volume of business actually transacted from the time when these rates were declared to be effective until the 31st day of March, 1892, (about seven months), shows a greater loss than at the rate of $200,000 per annum. For upwards of three years last past the railroad and property of this company had been in the hands of receivers appointed by the district court of Smith county, Texas. By reason of the insufficiency of its earnings, the railroad company was unable to pay the interest upon its first and second mortgage bonds during the year 1889 and subsequent years. In January, 1892, the defaulted interest upon its first mortgage bonds amounted to $1,441,720, and upon its second-mortgage bonds to $1,269,720. In that month an agreement of reorganization was entered into between the company and its security-holders, involving the funding of all defaulted interest, and the reduction of all future interest upon the second-mortgage bonds, and the deferred payment of a part of the defaulted interest upon

the first-mortgage bonds. The stockholders of the company were compelled to contribute new capital to the amount of over $1,000,000—about 11 per cent. upon the par value of the outstanding capital stock of the company.

"The Gulf, Colorado and Santa Fé Case.

"(1.) The rates fixed by the operation of prevailing commercial and competitive conditions in effect at the time when the series of reductions inaugurated by the commission was commenced were so low and inadequate that this company, after the payment of the expenses of operation and repairs and the cost of necessary betterments and equipment, has been unable to earn the interest upon its first-mortgage bonds, such earnings falling short in the year ending June 30, 1891, of an amount sufficient to meet such interest in the sum of $289,906.81. These earnings excluded the possibility of payment of any interest on the company's second-mortgage bonds or of any dividend upon its stock.

"(2.) The actual loss to this company from the application of the commission's rates to business actually transacted for the eight months ending February 29, 1892, in comparison with the same period ending February 28, 1891, aggregates the sum of about $300,000. The bonds of this company are issued at the rate of $12,000 per mile of first-mortgage bonds; $8,000 per mile of second-mortgage bonds; total, $20,000 per mile of road owned by the company. In order to obtain the sums of money to defray the cost of necessary betterment, improvement, and equipment of its property, and to meet the deficits of earnings to pay the operating expenses and interest on bonds, this company has been compelled to borrow large sums of money, and it now owes a floating debt incurred for these purposes, including unpaid interest coupons, of upward of $3,300,000."

That each of said railways put the commission tariffs complained of in effect on its lines under protest and under coercion of the severe provisions relating to suits against it for damages and penalties should it refuse or fail to so put them in effect. That the number of suits to which they

would otherwise daily become liable amounted to many hundred.

"The legislature has power to fix rates, and the extent of judicial interference is protection against unreasonable rates." *Railway Co.* vs. *Wellman*, 143 U. S., 344; 12 Sup. Ct. Rep., 400. "The question of the reasonableness of a rate of charge for transportation by a railway company, involving, as it does, the element of reasonableness, both as regards the company and as regards the public, is eminently a question for judicial investigation, requiring due process of law for its determination. If the company is deprived of the power of charging reasonable rates for the use of its property, and such deprivation takes place in the absence of an investigation by judicial machinery, it is deprived of the lawful use of its property, and thus, in substance and effect, of the property itself, without due process of law, and in violation of the Constitution of the United States; and in so far as it is thus deprived, while other persons are permitted to receive reasonable profits on their invested capital, the company is deprived of the equal protection of the laws." *Railway Co.* v. *Minnesota*, 134 U. S., 458; 10 Sup. Ct. Rep., 462. If such deprivation is shown here, does it take place in the absence of an investigation by judicial machinery? It must be conceded that as between private parties and the railways no such investigation of the reasonableness of the rates is permitted by the railroad-commission law of Texas, for that intent is expressed in section 5 in terms too comprehensive and plain to be modified by construction. Two of the members of the railroad commission are eminent lawyers. It may, I think, be fairly, if not conclusively, presumed that before the commission undertook the work of establishing rates they had the advice of the very able attorney general as to the sound construction of section 4 of said act; and, as defendant herein, said commissioners and attorney general cannot complain if I assume that the practical con-

struction, which in the conscientious discharge of their public duties the commission have placed on section 4, is the sound construction.

The following is a copy of the notice which the commission issued and had addressed and sent through the mails to the general freight agent of each of the railroads of Texas:

"OFFICE OF RAILROAD COMMISSION OF TEXAS.
"AUSTIN, TEX., *June* 20, 1891.

"GENERAL FREIGHT AGENT —— RAILROAD.

"DEAR SIR: In acordance with the requirements of section 4 of the act creating the railroad commission of Texas, passed at the regular session of the twenty-second legislature, and approved April 3, 1891, the railroad commission of Texas will, on Monday, July 6, 1891, begin and continue from day to day until completed the classification and subdivision of all freight and property, of whatsoever character, that may be transported over the railroads of this State into such general or special classes or subdivisions as may be found necessary or expedient and the fixing for each class or subdivision of freight a reasonable rate for each railroad subject to this act for the transportation of each of said subdivisions or classes; also that at the above-named time and place a special classification and rates of charges thereon of cotton, grain, lumber, and salt will be made. Your attention is also called to section 8 of the act aforesaid, which provides that in all cases where the rates shall not have been fixed by the commission no changes shall be made except after ten days' notice to and consent of comsion. Therefore the changing of any rates in force June 10, 1891, except after notice as above provided and the consent of the commission, is unlawful.

"Please acknowledge the receipt of this notice and oblige,
"JOHN H. REAGAN, *Chairman.*
"J. J. ARTHUR, *Secretary.*"

At the date named in said notice representatives of most if not all of the railway companies in Texas appeared before the commission, in session at Austin, Tex. No proposed change in existing classification or rates was indicated by

the commission, and no issue was submitted which could be either agreed to or made the subject of proof or suggestion by argument. The commission in their answer say:

"The said commission had just begun the investigation of the classification and rates of said roads in the State and had at the date of said conference not determined either upon any classification or rates."

One of the counsel for the cross-complainants, who was present before the commission at Austin on the said 6th of July, 1891, and the several following days, to answer for his road, describes that assize as "a sort of general experience meeting;" and another one of the counsel, who was also present for the same purpose, pictures it as a kind of Chautauqua class, where free lectures on the general subjects of railroad freights, classifications, and rates were invited from all comers, which could result in nothing, unless a Babel, with its confusion of tongues. The defendant commissioners say in their answer: "The said conference, beginning on July 6, 1891, lasted for several days, and all freight rates in Texas were discussed and considered;" and again: "Defendants aver that the session begun July 6, 1891, has never terminated or been adjourned at all, and that all the rates complained of in said bill or which have ever been fixed by said commission have been fixed at the session aforesaid;" and again: "Defendants further admit that said commission is proposing and proceeding to make and promulgate other rates and tariffs without other formal notice than that dated June 20, 1891."

The suggestion that the proceedings here indicated constitute "due process of law" within the meaning of the provisions of the Constitution or "an investigation by judicial machinery," within the meaning of the decisions of the Supreme Court, can hardly be seriously made by the sound lawyers who have appeared to resist these motions; and the subject is too grave for jest. *U. S.* vs. *Lee*, 106 U. S., 196, 1

Sup. Ct. Rep., 240; *Poindexter* vs. *Greenhow*, 114 U. S., 270, 5 Sup. Ct. Rep., 903, 962; *Railway Co.* vs. *Minnesota*, 134 U. S., 418, 10 Sup. Ct. Rep., 462; *Jones* vs. *Robbins*, 8 Gray, 329; *City of Louisville* vs. *Cochran*, 82 Ky., 15.

It is, however, seriously urged that, conceding that section 4 does not provide due process of law as meant by the Constitution and that section 5 is unconstitutional, the railroad-commission law, without section 5 and its related sections and the work of the commission, may still stand and the complainants be without legal ground for the relief they seek. This, however, is wholly inconsistent with the position assumed by the leading advocates of the commission in their public addresses to the people in the canvass now pending in Texas, of which, on a hearing in chambers, I may be permitted that far to take judicial notice. In at least one public address his excellency, our present governor, in discussing the subject of the Texas commission, and especially section 5 of the railroad-commission law, certainly said in substance, with zeal and warmth and telling iteration, that section 5 was the heart of this law and it and its related sections the life of the Texas railroad commission, and, according to my most careful study of this law, in that respect and to that extent his excellency's construction of the law was sound. The act is largely modeled after the Interstate Commerce act, into which, however, it seeks to infuse life by section 5 and its related sections. It is evident on the face of the law, as we know the fact to have been, that its framers were thoroughly conversant with and kept steadily in their view the decision of the Supreme Court in the Minnesota case, then but lately announced. The act appears, with studious, but with illogical, ingenuity to endeavor to contrive a due process of law that would, while the due process was proceeding, permit the doing of the will of the commissioners, however arbitrary and unreasonable their rates might be, and might eventually be proved to be. It was well known

that the interstate commission did not possess or claim the power to enforce rates fixed by it, except through the long-established courts of the country, and that the railroad commissions of other States, with perhaps one or two exceptions, did not have or claim the power to fix conclusive rates. It was evidently thought that all these were inefficient; that the commission would not meet the exigency of the hour if the reasonableness of its rates could be inquired into before being enforced; that with their organized guild of able lawyers stationed or capable of being concentrated at each given point on their respective lines, the railroad managers would show small respect to the promulgations of this advisory committee, as they considered the commission would be if the reasonableness of its rates might in every case be questioned in the courts. Hence, the many and severe provisions for constraining the roads to submit to whatever rates the commission might impose until, by a new patent process, the roads could recover the right to hold up the shield of the Constitution against unreasonable rates.

It clearly appears to me that every provision of this law that tends to thus enforce a compliance with the rates of the commission, whether they be reasonable or not, and every provision tending to embarrass or enabling the commissioners to embarrass such roads as may choose to invoke the protection of the Constitution against the taking of their property without the due process of law, or denying them the equal protection of the law, is affected with the same vice that renders section 5 invalid. It follows from the views thus far expressed that these motions should be granted, and that the very many other most interesting questions presented in the record and in argument on this hearing are not material to be considered now. That the measure of complainants' and cross-complainants' relief shall be adequate, it is necessary that it should be as full as they have asked. And it is so ordered.

(1.) That until further order of this court, or of the judges

hereof, the defendant The Texas and Pacific Railway Company be, and it is hereby, restrained from putting or continuing in effect the tariffs, circulars, or orders of the railroad commission of Texas, and each and all of them, described in the bill of complaint herein, and in Exhibit C thereto, and therewith filed, and from charging or continuing to charge the rates specified in said tariffs, circulars, orders, or either or any of them.

(2.) It is further ordered, adjudged, and decreed that the defendants The Railroad Commission of Texas and the defendants John H. Reagan, Wm. P. McLean, and L. L. Foster, acting as said railroad commission of Texas, and their successors in office, and the defendant Charles A. Culberson, acting as attorney general of the State of Texas, be, and they are hereby, enjoined and restrained from instituting or authorizing or directing any others to institute any suit or suits, action or actions, against the said railway company for the recovery of any penalties under and by virtue of the provisions of said act of the legislature of the State of Texas, approved on the 3d day of April, 1891, or under or by virtue of any of the said tariffs, orders, or circulars of the said railroad commission of Texas, or any or either of them, or under and by virtue of the said act and the said tariffs, orders, or circulars of said commission, or any or either of them combined, and restraining said defendants Reagan, McLean, and Foster and The Railroad Commission of Texas from certifying any copy or copies of any of said orders, tariffs, or circulars, or from delivering or causing or permitting to be delivered copies of any of said orders, tariffs, or circulars to the said Culberson or any other party, and from furnishing the said Culberson or any other party any information of any character for the purpose of inducing, enabling, or aiding him or any other party to institute or prosecute any suit or suits against the said railway company for the recovery of any penalty or penalties under the said act.

(3.) It is further ordered, adjudged, and decreed that the

said railroad commission of Texas and the said Reagan, McLean, and Foster be restrained from making, issuing, or delivering to the said railway company, or causing to be issued or delivered to it, any further tariff or tariffs, circulars or orders.

(4.) It is further ordered, adjudged, and decreed that all other individuals, persons, or corporations be, and they are hereby, restrained from instituting or prosecuting any suit or suits against the said railway company for the recovery of any damages, overcharges, penalty or penalties, under or by virtue of the said act, or any of its provisions, or under or by virtue of the said tariffs, orders, or circulars of the said railroad commission of Texas, or any or either of them, or by virtue of the said act and the said tariffs, orders, or circulars, or any or either of them combined.

A. P. McCormick,
Circuit Judge, Fifth Circuit.

Office Supreme Court U. S.
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JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT

Of the United States.

Appeal from the United States Circuit Court for the Western District of Texas.

JNO. H. REAGAN, W. P. McLEAN, AND L. L. FOSTER, CONSTITUTING THE RAILROAD COMMISSION OF TEXAS, AND CHAS. A. CULBERSON, ATTORNEY-GENERAL, APPELLANTS,

—vs.—

THE FARMERS' LOAN AND TRUST COMPANY AND INTERNATIONAL AND GREAT NORTHERN RAILWAY COMPANY, APPELLEES.

BRIEF AND ARGUMENT FOR APPELLANTS.

CHAS. A. CULBERSON, Attorney-General
HY. C. COKE,
W. S. SIMKINS,
COUNSEL FOR APPELLANTS.

Murchison vs. White, 52 Texas, 81.

Cooley Const. Lim., 383, 398, 406, 409.

Freeman on Judgments, Chapter 8.

Fennin vs. Krapfl, 68 Iowa, 244.

Adams vs. Saratoga, 10 N. Y., 332.

Brown on Jurisdiction, pp. 51, 53.

Judge Dillon, in concluding his argument on this branch of the case, remarked, that it is one of the fundamental bases of English and American liberty that the citizen is entitled to have his legal rights determined in general courts of justice, and not in special or administrative tribunals invested with special powers and special modes of procedure contrived for the occasion. It is too late to criticize the methods; ever since the first exercise of the right of eminent domain down to the present methods of controlling railroads by Commissions, and through all gradations of government—Federal, State, County and Municipal—these special tribunals with a jurisdiction affecting property, rights have been established and commended for the facilities offered in the administration of government.

In the rapid advance of material development not dreamed of by our plodding fathers, it is too late to demand that the process of the law that could control the ox cart, and express wagon, and enforce the legal liability of the stage coach, should be applied to the railroad corporations of to-day. This extreme

loyalty to the ways of the past exhibits a creditable conservatism, but when we remember that the author has himself sat long at the receipt of customs defending with magnificent ability the corporate tax gatherers, we are constrained to think that to certain faults he is a little blind, and we cannot willingly assent to his proposition, especially the application he seeks to make.

The greatest danger to our institutions is the possibility that the inefficiency of the law should excite the contempt of the people; it is well known what would follow such a lamentable condition.

It is the glory of the law that its elasticity can meet the necessities of an expanding and ever increasing traffic, and when expeditious methods are demanded to control men and measures, it can promptly respond within the limits of constitutional provisions guaranteeing protection to liberty and property.

WE NOW SUBMIT THE QUESTION OF THE VALIDITY OF THE LAW AND HOW FAR IT IS OBNOXIOUS TO THE CONSTITUTIONAL OBJECTIONS RAISED BY COMPLAINANTS AND CROSS-COMPLAINANTS.

It is alleged that said law is unconstitutional and void because Section 5, in so far as it seeks to make the finding of the Commission conclusive as to the reasonableness, fairness, and justness of the rate fixed,

and to forbid it being controverted in certain cases except under the conditions provided in Section 6, is in controvention of the Constitution and laws of the United States.

Because the effect thus given to it is to deprive the Railroad of its property without due process of law.

Because it deprives the Railroad of a lawful defense when prosecuted for penalties provided in Section 17 of the Act.

Because it deprives the Railroad of the equal protection of the laws.

And because it deprives the Railroad of trial by jury.

Section 5 is as follows:

"In all actions between private parties and Railway Companies brought under this law, the rates, charges, orders, rules, regulations and classifications prescribed by said Commission before the institution of such action shall be held conclusive and deemed and accepted to be reasonable, fair and just, and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for that purpose in the manner prescribed by Sections 6 and 7 hereof."

Complainants further object to the validity of the law on the ground that Sections 6 and 7 of the Act, taken in connection with Section 5, are contrary to Section 1, Article 14, of the amendments to the Constitution of the United States, and Sections 17

and 19, Art. 1, of the State Constitution. In this, they withdraw from the Railroad Company the right to make the defense of the unreasonableness of the rates, and limit the issue of unreasonableness to an affirmative proceeding directly instituted for that purpose in a single local court.

Because they deprive the Railroad of the right to make a lawful defense under settled rules of evidence in suits against it by individuals.

Because it deprives the Railroad of the equal protection of the laws and of its properties without due process of law.

Because the court of Travis County appointed under the 6th Section of the Act as the proper jurisdiction to which an appeal may be taken, is not a court of competent jurisdiction, and if a court of competent jurisdiction, the remedy is inadequate, because the trial on appeal may extend over a great length of time, during which time the Railroads and the beneficiaries in Complainant's trust may suffer irreparable loss and injury in the enforcement of the rates appealed from, and no provision is made for restitution if the rates are finally declared unjust.

Sections 6 and 7 are as follows:

SEC. 6. If any railroad company or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the Commission, such dissatisfied company or party may file a petition setting forth the particular cause or causes of objec

tion to such decision, act, rate, rule, charge, classification, or order, or to either or all of them, in a court of competent jurisdiction in Travis County, Texas, against said Commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil causes in said court. Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court at either of its terms, and said action so appealed shall have precedence in said appellate court of all causes of a different character therein pending: provided, that if the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days notice.

SEC. 7. In all trials under the foregoing section the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to it or them.

Sections 17 and 19 of Art. 1 of the State Constitution are as follows:

SEC. 17. No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person, and, when taken, except for the use of the State, such compensation shall be first made, or secured by a deposit of money, and no irrevocable or uncontrollable grant of special privileges or immunities shall be made; but all privileges and franchises granted by the Legislature or created under its authority, shall be subject to the control thereof.

SEC. 19. No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

Because the penalties prescribed by the Commission act are excessive and contrary to the Constitution of Texas.

Because the law combines judicial, legislative and executive powers in the Commission contrary to the Constitution of the State, Art. 12, Sec. 1, which is as follows:

Three departments; to be kept distinct—

The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to-wit: Those which are legislative to one, those which are executive to another, and those which are judicial to another; and no person or collection of persons being of one of these departments shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

A further objection to the constitutionality of the law was urged:

Because by virtue of the act of the Legislature of Texas of date, the 7th day of February, 1854, which became a part of the charter contract between the Railway company, its bondholders and the State of Texas, the powers granted to the Commission whereby it was authorized to fix rates

in contravention of the provisions of that law of 1854 were unconstitutional. The act referred to is as follows:

"Sec. 1. Be it enacted, etc., that all railroad companies which have been heretofore incorporated, or which shall hereafter be incorporated or relieved from the performance of any act required of them, or which shall accept of any donation or loan from this State, or which shall accept of the subscription of any county of this State, shall have all the powers and privileges, and be subject to all the duties, liabilities and provisions contained in this act.

"Sec. 15. It shall be lawful for the Legislature at any time to prescribe the rates to be charged for the transportation of persons and property upon any such road should they be deemed too high, and may exercise the same power every ten years; provided, that no reduction shall be made unless the net profits of the company for the previous ten years, the expenditures of the company bona fide, and not with a view to defeat the operation of this section, shall amount to a sum equal to 12 per centum per annum upon its capital stock, and then so as not to reduce the future probable profits below the said per centum."

That for these reasons the Commission act as a whole is invalid.

Preliminary to answering these constitutional objections, we invoke the settled maxims of construction in testing the constitutionality of legislative acts as follows:

1st. In passing on the unconstitutionality of the law the courts will give such a construction as

will make it valid if possible. The presumption of validity is of great strength.

Eames vs. Savage, Meyers Vested Rights, p. 188.

Fletcher vs. Pack, 6 Cranch, p. 87.

In this case Chief Justice Marshall says: "To overthrow this presumption judges must be convinced, and the conviction clear and strong."

In 12th Wheaton, 270, Ogden vs. Sanders, Washington, J., says: A doubt is sufficient to vindicate the opinion of the constitutionality of a law. Same in Lunt's case, M. E. 413; Munn vs. Ill., 94 U. S. 113.

In sinking fund cases, 99 U. S., Chief Justice Waite says:

The unconstitutionality must be clear and every possible presumption is in favor of the validity of the law. One branch of the Government can not encroach upon the other without danger, etc. This language was approved by Justice Harlan in the Oleomargarine case from Pennsylvania.

2nd. In testing the constitutionality of an act all parts must be construed together. The seal of condemnation cannot be placed on a single clause without reference to what precedes or follows.

3rd. That a part of a law may be obnoxious to constitutional provisions and yet the law as a whole be valid.

IS THE LAW VALID.

We contend that the law within the meaning of the provisions of the Constitution invoked by Complainants and Cross-Complainants is valid. That the law does not deprive the Railroad of property without due process of law, (nor of a lawful defense), nor of the equal protection of the laws, nor of trial by jury, within the meaning of the Federal or State Constitutions, (Art. 1, Sec. 15).

In support of the contention that Section 5 is a valid provision of the law, we submit the following propositions:

PROPOSITION 1.

That Section 4 of the Act having provided for notice, an issue, compulsory process for witnesses and a trial before entering the judgment fixing the rates, and referred to in Section 5; that full and ample process within the meaning of the 14th Amendment to the Constitution of the United States was provided by the Act and was competent for the Legislature to give such effect to the judicial determination of the Commission reached through this process as would make it most effective in the administration of the law.

PROPOSITION 2.

That Section 5 was the judicial and logical result of enforcing Section 4 and was a just appropriation in behalf of the individual citizen of the judgment after trial upon the issues, between the railroad and the public, of which the citizen is a part.

PROPOSITION 3.

Section 5 establishes simply a rule of evidence in cases wherein the individual citizen sues for injuries caused by the refusal of the railroad to obey the judgment recovered under the provisions of Section 4.

PROPOSITION 4.

Section 6 of the law having provided for appeals without bond to courts of competent jurisdiction, in case of dissatisfaction with the judgment of the Commission, railroads and other parties failing to exercise the right of appeal thus given, are estopped from denying the conclusive effect of the judgment as

declared by the law, and of seeking the aid of courts of equity to enjoin a judgment which they could have avoided if unjust by the right of appeal provided.

STATEMENT UNDER PROPOSITIONS.

See Sections 4, 5, 6 and 7 of the Act of Texas, above set forth, 14th Amendment U. S. Const.

ARGUMENT.

While the difficulty of giving a perspicuous, comprehensive and satisfactory definition of due process of law has been repeatedly recognized by this court, yet from the frequent adjudications of late years "of the term" within the meaning of the provisions of the Constitution of the United States in cases similar in issue to the case at bar, we find no difficulty in culling definitions which in our opinion are pointedly applicable. In Munn vs. Illinois, it was settled that the fixing of rates was not a taking without due process of law.

In Hagar vs. Reclamation Dist. No. 108, 111 U. S. p. 572, Justice Miller observes: (By due process) is meant one which following the forms of law is appropriate to the case and just to the parties effected. It must be pursued in the ordinary mode prescribed by law; it must be adapted to the end to be obtained, etc.

In Spencer vs. Merchant, 125 U. S. 345, Justice Gray said: If the Legislature provides for notice and hearing at some stage of the proceedings there is no taking without due process, also McMillan vs. Anderson, 95 U. S. p. 37, the same principle is announced.

In Davidson vs. New Orleans, 96 U. S. p. 97 to 104, Mr. Justice Miller says: Whenever by the laws of a State or by State authority an assessment servitude or any burden is imposed on property for public use and those laws provide for a mode of contesting the charge thus imposed in the ordinary courts of justice with such notice as to the person or proceeding as to the property as is appropriate to the nature of the case, then the judgment is not without due process, and again says the same great Judge: It is not possible to hold that where, by the laws of the State, the party aggrieved has upon the issues effecting his property a fair trial in court of justice according to the modes of proceeding applicable to such case, that he has been deprived of that property without due process of law.

In Pearson vs. Yewdall, 95 U. S. p. 436, the Court says that if provision be made in a State law for inquiry as to damages and for appeal to the highest court, it is due process.

In Walker vs. Sovinet, 92 U. S. p. 90, it was stated that due process of law in this State was regulated by the laws of the State.

The vital principle in considering the question of due process is the opportunity to be heard respecting the justice of the judgment sought. Or, as Mr. Justice Gray says in Spence vs. Merchant, supra: "Does the law furnish opportunity for raising the pertinent questions and to dispute the liability both as to extent and amount?"

What form or method of procedure may be adopted through and by which this opportunity is obtained is wholly within discretion of the Legislature, and cannot be reviewed by this Court further than to determine the fact. Does the opportunity above referred to exist, and are there provisions within the form or mode prescribed by the State for hearing before condemning, or if followed furnishes constitutional protection.

Arrow Smith vs. Harmoning, 118 U. S. p. 243.

Cannard vs. Louisiana, 92 U. S. p. 478.

In the light of these observations as well as in the multiplied definitions of due process found in the decisions of a century, it must be admitted that the courts have permitted or rather acknowledged a large discretion in the State Legislatures in fixing the forms of procedure whereby the property of the citizens may be affected. As said by Mr. Justice Bradley, in Bowman vs. Lewis, a State may adopt any system of laws or judicature. It is equally clear in the light of the decisions of

this Court, that whether the initial proceedings provided by the State law, affecting property rights, are begun before a judicial or quasi judicial tribunal, or whether the powers of the party or parties charged with the execution of the law be administrative or executive, if at any stage of the proceedings a method be provided whereby notice and a hearing can be had then it is due process of law.

Dew vs. Hoboken Co., 18 Howard, p. 272.

Davidson vs. N. O., 96 U. S., pp. 97-108.

Applying these decisions to the law of Texas, we find:

1st. A tribunal created by law to hear and determine.

2nd. A demand, that the initiatory proceeding embodied in Section 4 of the act be enforced, in language of unmistakable import to-wit, **"before any rate can be fixed,"** etc., process is required to give the railroads their day in court.

3rd. Provision for hearing under forms of law.

4th. Section 6 provides for a continuation of the suit by appeal to the regular appellate courts of the State.

Section 5 in no way effects this right or impairs the remedy given; it simply declared the effect to be given to the judgment of the Commission after the trial provided in Section 4. As before said, it was the just appropriation of the result of

the trial before the Commission, and the effect thus given, pending the appeal if taken, or not taken, is strickly in line with the decisions of the Supreme Court of the State of Texas, which declares that a judgment of a court of competent jurisdiction can be plead as readjudicata though appealed from, and though the decision of the lower court be erroneous.

Thompson vs. Griffin, 69 Texas, p. 139.

Thomas vs. Junction City Irr. Co., 80 Texas, page 550.

Section 5 simply recognizes that the Commission was a tribunal of original amd competent jurisdiction, and that its judgment was res-adjudicata as to the issues decided and could not be controverted until, as provided in Section 6, it had been reversed by appeal.

If Section 5 be expunged from the law, the identical effect would result from the action of the Commission under Section 4.

It being the tribunal appointed for determining the issues of the reasonableness and justness of the rates, and having performed their duty under the law, its conclusion in case of a suit by a citizen against the railroad for overcharge, discrimination, or extortion, could be set up as a conclusive standard to determine the issue, in other words could have been plead as res-adjudicata, for the following reasons:

1st, Because the public of which the individual is a part, represented by the Commission had brought the railroad before a proper tribunal and determined the very issue which it is claimed the railroad should be permitted to set up again against the citizen.

Girardin vs. Dean, 49 Tex. p. 43.

Thompson vs. Lester, 75 Tex. p. 521.

2nd. Because the railroad had its day in court.

3rd. Because the judgment was binding on the railroad and public at large until set aside in a manner provided by law.

Windsor Coal Co. vs. Chicago & A. R. Co., 52 Fed. Rep., p. 720.

Briefly stated, Section 5 is only the declaration of an ordinary principal of law; a rule of evidence springing out of the conclusiveness of judgments of tribunals of general or special jurisdiction, and the necessities of litigation, and not a new discovery by the Legislature of Texas.

But assuming that the Legislature had discovered the rule, it is submitted that the conditions connected with the administrations of the law rendered it

advisable in order to facilitate its execution; that in all suits arising under the law wherein the individual citizen was a party, the judgment of the Commission should be held conclusive until reversed.

In this great traffic problem it is the consensus of opinion among all railroad managers and men, and a principle in the problem that has been judicially recognized, that the reasonableness or justness of any single rate or line of traffic cannot be determined by railroads or courts; that "reasonableness" can only be solved by a consideration of the entire traffic of the road. The unit of the measure is the rate per ton per mile, the solution of which can only be evolved out of the consideration of the business of the road as a whole. That while a rate on a single line of freight may be low, or apparently so, yet it may not be unreasonable because compensated somewhere else in the unlimited field of traffic, and the rates as a whole be within the limits of reasonableness and justness.

This being an acknowledged factor in the rate problem, it is proper that the contest to settle these issues should be between the public, as represented by the Commission, and the Railroad companies, and that when thus settled under the provisions of law it should be the conclusive standard to guide the citizen. In every instance where the citizen had a wrong to redress it would arise upon an overcharge or discrimination in some one line of traffic in which he dealt. If the issue of reasonableness was open, it

could not be determined without reference to every line of traffic, and a consideration and investigation of the entire receipts and expenditures of the defendant railway for an indefinite period in the past, to be selected by the Railroad company for purposes of comparison; and among other things to be considered, the citizen would have thrust into his face Construction accounts, Betterment accounts, Maintenance of Rolling Stock, Transportation and Traffic expenses, Telegraph service account, Loss and Damage account, General Expense account, Income and Property expense account, and others too numerous to mention, requiring the ability of a high-priced expert to try and fathom the intricacies. The bewildered citizen and his no less bewildered attorney must meet these conditions to determine the facts perhaps, as to whether the rate upon a mule was reasonable, and if perchance the citizen succumbs to the unequal contest, the value of the mule would be an insignificant credit upon the bill of costs.

It would not be right to force the citizen into this unequal contest and thus set him adrift on a sea of litigation whose breadth and depth, as demonstrated by this case, the State of Texas, with all its means and power, has as yet been unable to measure or fathom. Again, to pursue or follow these issues now made conclusive by section 5, and covering such a vast field of investigations, through the delays of appellate procedure, as ordinarily provided, was beyond the financial if not the physical ability

of the ordinary suitor. This fact was recognized by the Legislature who required the issue of fairness and justness and reasonableness to be settled in such manner, and under such circumstances that equality before the law would be a fact and not a delusion.

In the concurring opinion of Justice Miller in the Minnesota case, 134 U. S. 465, it was clearly indicated that the rates should be fixed in this general and conclusive method as provided by the Texas Act; that it was not competent for each individual or for the corporation with regard to each individual demanding its services to raise a contest in the court, over issues that should be settled in a general way.

In addition to what has been said with reference to section 5 as a rule of evidence, which it was competent for the Legislature to declare, we submit the following authorities:

In Tilley vs. the Georgia Commission, 4 Woods 448, the court says, that, declaring the effect of the fixing of a rate by the Commission is but establishing a rule of evidence which was undoubtedly within the power of the Legislature.

In Lloyd, S. S. Co. vs. Hedden, 43 Fed. Rep. p. 17, it was declared that an act of Congress of 1884 giving to the decisions of the Commissioner of navigations on all questions related to a tonnage tax a final and conclusive effect, was constitutional.

So in the case of Passavant, et al., vs. U. S., 148, U. S., p. 219, arising under the customs administration's act of Congress of June 10, 1880. This act provided that if the

appraised value of the imported article exceeded by more than 10 per cent. the value declared in the entry, that should be collected in addition to the duties imposed by law, a further sum equal to 2 per cent. of the total appraised value for each 1 per cent. that the appraised value exceeded the value declared in the entry. The act further declared that the decision of the board of general appraisers upon the question of valuation, when properly submitted to them, should be final and conclusive as to the dutiable value against all parties interested therein. The facts were that Passavant & Co. imported into New York from France certain gloves, which were entered by them at certain valuations. The collector of the port of New York, under Section 40 of the act, caused the gloves to be appraised, upon which appraisal their value was advanced more than 10 per cent. on the value declared by the importers on entry. Upon objection by the importers to this valuation, the gloves were appraised by one of the general appraisers, and on further objection by the importers the matter was carried to the board of general appraisers, under Section 13 of the act. This board, after due notice and examination of the question submitted, sustained the increased valuation, and thereupon the collector levied and assessed upon the gloves the duties imposed by law and the additional duty prescribed by said act of June 10, 1890. The importers duly served upon the collector a protest against his appraisement of duty for all excess above the advalorem duty, on the grounds that no legal re-appraisement had been made; that the board had refused to receive evidence offered by them as to the value of the gloves, and had acted upon other improper evidence, that the importers were given no opportunity to controvert evidence against them; that the original invoice was correct and that no duty was assessed upon a greater valuation. Upon this protest coming before the Board of General Appraisers, they adhered to the increased

valuation and sustained the Collector, and held that the decision of the board as to such valuation was final and conclusive. Thereupon the importers applied to the Circuit Court of the United States for a review of the case and a reversal of the decision of the board and the action of the Collector in assessing duty on the basis of the increased valuation, and in imposing additional duty as provided by the act.

It was shown in the record of the proceedings that the importers were served with reasonable notice of the several hearings after a day fixed therefor, and were cited to appear before the board and sustain their allegations of facts by evidence. The Circuit Court refused to entertain jurisdiction, and dismissed the case, from which order the importers appealed to this Court. This Court held that the valuation fixed by the Board of General Appraisers, being in conformity to the act, was final and conclusive on all parties, and that the Circuit Court had no jurisdiction to review the action of the board, and concluded as follows: "They (the importers) had full notice of the proceedings before the Board of General Appraisers upon their appeal to said board, and ample opportunity to be heard on the question of the market value of the imported goods. It can not, therefore, be properly said that they have been subjected to penalties without notice, or an opportunity to be heard, or been deprived of their property without due process of law."

MINNESOTA CASE.

But complainants claim that the conclusive effect as given to section 5 in the Texas Act clearly within the condemnation of the Minnesota case 134 U. S. 418-466, and with surprising confidence rest their case upon its decision.

It is submitted that there is nothing in the case at bar resembling the Minnesota case other than there was a Commission law construed. The commission of Minnesota had fixed a milk rate, first by recommendation and then by issuing and posting the schedule as required by the law. The railroad was dissatisfied and refused to accept the recommendation or enforce the schedule. The Commission, through the Attorney-General of the St te, applied to the Supreme Court of the State for a writ of mandamus compelling compliance; to the alternative writ the Railroad company filed a return and raised the following issues:

1st. That the Legislature could not delegate to a Commission the power to fix rates.

2nd. That establishing rates against the will of the company was protato a taking of property without due process of law.

3rd. That three cents per gallon for carrying milk was fair and reasonable and that two and one-half cents per gallon, as established by the Commission, was not fair and reasonable, and to enforce the rate was taking property without due process of law.

Upon the hearing of these issues the Railroad company applied for a reference to take testimony, which reference was refused by the Supreme Court and a judgment rendered for the Relator that the peremptory writ issue requiring compliance with the Commission rate.

In reaching this decision the Supreme Court of the State held as a proper construction of the Minnesota Act that the tariff of rates issued by the Commission under and in pursuance of the Minnesota Act were conclusive and final as to what are lawful, equal and reasonable rates, and having thus fixed the rates there was no fact to traverse except the violation of law in refusing compliance, and that the conclusive effect so given was within the power of the Legislature. The Supreme Court of the United States in passing upon this condition of case held: that there was nothing in the charter of the defendant Railway preventing the Legislature from regulating in some form the rates, and the question was whether the form in the case at bar was valid. The Court further held in effect that the construction of the Minnesota law was not an open question, but that the Court was bound by the construction given to the act by the Supreme Court of Minnesota; to-wit:

1st. The rates fixed by the Commission were conclusive as to reasonableness; and the law did not contemplate or allow an issue to be made or an inquiry to be had upon the question of reasonableness or equality in fact.

2nd. That there was no fact to traverse but the violation of the law. That bound by this construction they were obliged to hold the act unconstitutional as claimed by the defendant company; because, it deprived the company of a judicial investigation under the forms and with the machinery provided by the wisdom of the successive ages, for investigating the truth of the matter in controversy and

substituting therefor as an absolute finality the action of a Commission which in view of the powers conceded by the State Court could not be regarded as clothed with judicial functions or as possessing the machinery of a Court of Justice.

This observation was made by this Court because of the fact that section 8 of the Minnesota Act relating to the manner of fixing rates by the Commission simply permitted the Commission upon determining any part of the schedule of rates to be unreasonable to change it and COMPEL the railroads to adopt such change in the absence of any provision in the act for a hearing orsummons, or notice before the Commission had found what it had to find and declared what it had to declare, and because, again, there was nothing in the act providing for the introduction and examination of witnesses by the company.

The Court then, after stating that the return to the writ, submitted the question of reasonableness, enunciated from the above facts two propositions of law substantially as follows:

1st. That a rate of charge of the nature of the one before the Court was eminently a question for judicial investigation requiring due process of law for its determination.

2nd. If the company is deprived of the power of charging reasonable rates and such deprivation takes place in the absence of an investigation by

judicial machinery, it is deprived of its property without due process of law and of the equal protection of the laws.

Such is the Minnesota case.

A brief analysis shows: That the Minnesota Commission had the power to change any rate upon the schedule filed by the railroad and its simple declaration of the change established as just and reasonable without any power to controvert it.

2nd. That while the second section of the act required the rate to be reasonable, which was a question for judicial investigation, yet the act utterly failed to provide any method for investigation and substituted as a finality, the arbitrary conclusion of the Commission.

3rd. That the act provided for no process or hearing of any nature by the Commission before it found what it had to find, and declared what it had to declare; that the Commission could not be regarded as clothed with judicial functions or possessing the machinery of a court of justice.

We submit as legitimate inferences from these conclusions:

1st. That had the Legislature of Minnesota made provision in its act for a hearing in some form known to courts of justice precedent to the action of the Commission, it would have been regarded as clothed with judicial functions, and possessing the machinery of a court of justice.

2nd. That had the Commission been clothed with judicial functions and possessed the machinery of a court of justice, the conclusive effect given to the finding of the Commission would not have been obnoxious to the Constitution of the United States.

The inference from the legal propositions announced by the Court upon these facts is, that the deprivation of the power to charge reasonable rates must take place **in the absence of an opportunity for an investigation by judicial machinery** in order to bring it within constitutional condemnation.

To state the proposition in converse form, the Minnesota case decides **that if a Commission act provides for an investigation after notice, and an opportunity for a hearing is given the railroad to be charged, before the rates are fixed, that "due process of law" within the meaning of the Constitution of the United States would be fully provided for.**

These views are emphasized by the judgment of this court in the case. Instead of dismissing the proceedings for mandamus, which would have been the legal effect of the conclusions reached, it remanded the case to the Supreme Court of Minnesota for further proceedings, with the clear intimation that if the said court could find upon review anything in the act

permitting a judicial investigation, it would be valid. Again, in this case this court was bound by the construction of the State Supreme Court upon the effect to be given to the Commission Act.

We think it a reasonable inference from the whole tenor of the case, and the nature of the order made in it, that had the question of the construction of the act been presented as an original one it is probable that this court may have found a sufficient basis in paragraph (e) of Section 8, of the Minnesota Act, to have declared an investigation contemplated after the written information required by the act had been given to the carriers, of the change to be made in the schedule.

We have thus presented this case at length because it has been made the key note of the present complaint, but with what justification we leave to the court upon a comparison of the Minnesota law with the Act of Texas.

A comparison will show that the framers of the Texas Act sought to avoid the defects of the Minnesota law pointed out by this court, that they sought faithfully to contrive and did contrive, that DUE PROCESS and JUDICIAL MACHINERY that would obviate adverse criticism and would give to the Commission of Texas a judicial character and to its conclusion the full effect of judgments.

In addition to this, it opened the courts of the State to the railroads and individuals dissatisfied

with the findings of the Commission, and provided in Section 6 a complete and expeditious method for reaching a final determination, and had the act been silent as to process other than this, every protection guaranteed by the Constitution of the United States and State would have been satisfied.

The District Court is commanded to lay aside all matters of other citizens to hear the complaint of the railroad on appeal from the decision of the Commission, and they do not have to wait like humble citizens of the land for terms of court, but may carry their complaints and have them determined at any part of a term then being held, and when they reach the Appellate Court of the State the immediate service of this tribunal is commanded to the exclusion of all business of a different nature. HERE DUE PROCESS WAS EXHAUSTED.

THE ACT VALID, THOUGH SECTION 5 BE INVALID.

But if should be held that section 5 is unconstitutional and void, this does not vitiate the remainder of the law. Section 5 is entirely separable and is simply a provision as to evidence. It is as follows: "In all actions between private parties and railway companies brought under this law, the rates, charges, orders, regulations, and classifications prescribed by said Commission before the institution of such action shall be held conclusive, and deemed

and accepted to be reasonable, fair and just, and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for that purpose in the manner prescribed by sections 6 and 7 thereof."

"The fact that some provision or part of a statute is unconstitutional does not make the remainder so if such remainder is independent of and separable from the void part so that one part may operate without the other." 3rd Am. & Eng. Enc. of Law, page 676, and note 4.

"The question is whether the several provisions are essentially and inseparably connected in substance." 3rd Am. & Eng. Enc. of Law, p. 676, note 4 and authorities cited.

"If when the void part is stricken out there remains enough to make a statute complete in itself and capable of being executed according to the apparent legislative intent and independent of that which has been annulled, it will be sustained." State vs. Tuttle, 53 Wis. 45; State vs. Exnicios, 33 L. Ann. 253.

"A law requiring the Secretary of State to furnish copies of the laws to certain newspapers is not rendered void in toto by an unconstitutional provision reducing the compensation to be paid to the secretary for furnishing such copies below what it was when he took his office." State vs. Kelsey, 44 N. J. Law, p. 1.

In this last case the Chief Justice in delivering the opinion of the Court said:

"The judicial effort always is to uphold every act passed by the Legislature, and if the entire act cannot be sustained, to execute such parts of it as can reasonably be

put in force. Whenever an unconstitutionality is apparent in a statute the inquiry arises, how closely such infirmity is connected with those essential provisions upon which the general legislative scheme is made to depend, and if such infirmity and such provisions are separable, and after the elimination of such illegality the law can be substantially executed, the body of the act will not be held to be invaiid. In such affairs it becomes a question whether it was the legislative design to make the constituent found to be illegal a necessary part of the enactment."

The legal rule is clearly expressed by Chief Justice Shaw, in Warren et. al. vs. Mayor, etc., of Charleston, reported in 2 Gray 84, 97, his language being as follows:

"If the main objects and purposes of the act are constitutional, they may be carried into effect, although there may be isolatsd clauses, or separate or independent enactments, obnoxious to the charge of being in violation of the constitution." Page 29.

"When the parts of a statute are so mutually dependent and connected, as conditions, considerations or compensations for each other as to warrant a belief that the Legislature intended them as a whole, and that if all could not be carried into effect the Legislature would not pass the residue independently, then if some parts are unconstitutional and void, all the provisions which are thus dependent, conditional or connected must fall with them." 3rd Am. & Eng. Enc. of Law, p. 678, end of note 4.

Mr. Sutherland in his work on Statutory Construction, section 171, uses the following language:

"To prevent the void part of a statute from vitiating other portions, it must be possible to separate them. This

separation would generally be easy where there is inserted in an act otherwise constitutional a distinct provision which can have no operation or effect, according to its terms, but such as is in violation of the constitution. Such a provision would be absolutely void, and it is difficult to conceive how it could be so blended with other and constitutional provisions as not to be capable of literal separation and exclusion: it may, however, be so related to other provisions as to infect them by dependence, but the actual separation of the vicious part would be practicable. Such separation is practically difficult when a provision is general, and a part of its applications or effects would be violative of the constitution and a part not so, and both equally within the terms, scope and apparent intent of the law-makers. Such provisions may be held valid so far as they can operate in harmony with the constitution, and by construction limited to such an effect. They will be held void for any other purpose beyond that limit. Statutes of a civil nature are severable when all their terms may have effect to some extent, and upon a defined principle may be so limited and all effect beyond constitutional barriers prevented."

In support of foregoing principles, see following authorities:

Packet Co. vs. Keokuk, 95 U. S., 80, 89.

Field vs. Clark, 143 U. S., 999.

Tiernan vs. Rinker, 102 U. S., 123, 127.

Huntington vs. Wotthen, 120 U. S., 97, 102.

Baldwin vs. Franks, 120 U. S., 683-86, 689.

Unity vs. Burrage, 103 U. S., 447-59; 80-83.

Penniman's Case, 103 U. S., 415, 416 and 417.

R. R. Co. vs. Shuttle, 103 U. S., 142.

McPherson vs. Blacken, 146 U. S., 1.

Zwernemann vs. Von Ronsenberg, 76 Tex., 522, 526-7.

State vs. Kantler, 21 N. W. Rep., 836, 858-9.

Cooley's Constitutional Limitations, pp. 177, 178, 210-214.

Sutherland on Statutory Construction, Sections 169 and 170.

Duryce vs. Mayor, etc., N. Y., 96 N. Y. 477.

People, ex rel. vs. Jobs, 4 Pac. Rep., 798, (Colorado).

Board of Co. Commissioners vs. Owen, 4 Pac. Rep. 795, (Colorado).

Trippe vs. Overacker, 1 Pac. Rep. 695.

Commonwealth vs. Hutchins, 5 Gray, 482.

Flerschner vs. Chadwick, 5 Oregon, 152.

People, ex rel. vs. Kenney, 96 N. Y., 294.

Exparte Frazier, 54 Cal., 94.

Town of East Kingston vs. Towle, 97 Am. Dec., 575.

Santo vs. State, 63 Am. Dec., 504.

The case at bar presents a clear application of the foregoing principles of constructions. The law

in question contains 23 sections, and many of these sections having numerous sub-divisions providing for every phase of Railway regulation and for enforcing the same. One isolated clause provides a rule of evidence which shall obtain in one of the various characters of suits by which provision is made to enforce the act, viz: In suits between individual shippers and Railways, and only then until the rate or regulation complained of is declared unreasonable in the appellate proceedings provided for.

In view of the constitutional provision adopted by the people to create a tribunal with adequate powers to control the traffic charges on railroads, and in the light of the conditions creating the necessity for this control, can it be said that the Legislature would not have passed the law creating the Commission with the powers granted unless Section 5, or some provision like it, could have been constitutionally maintained? An examination of the Statute negatives this idea, for it will be seen that you may strike out Section 5, and if necessary Section 17, providing for suits by citizens, and leave an act complete in itself capable of being executed in accordance with the apparent legislative intent, and wholly independent of that which has been rejected. W. U. T. Co. vs. State of Texas, 62 Texas, 633-4. It will be seen that Section 5 has relation only to litigation arising under Section 17 of the act, providing for suits by citizens in case of damage arising from any act of the railroad forbidden by law, and for the recovery of the

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penalties in cases of extortion and discrimination. Only in suits of this character, wherein the individual is a party, is the probative force of the findings of the Commission upon rates declared. Conceding then Section 5 to be unconstitutional, we still have a Commission charged with the duty of classifying freights, fixing reasonable and just rates, and to change such rates when required by the interest of all concerned; such is the primary object of a Commission. Nor is the act left without accquate power of enforcing the rates as thus fixed and established by the Commission. Section 14 declares that any violation of the rates so established is extortion and fixes the punishment therefor, while Section 18 provides a penalty for any neglect or failure of duty. Section 19 requires the Attorney-General to bring suit in the name of the State for the violations denounced in the act. It is thus apparent that eliminating Section 5 leaves a complete Commission law for fixing, establishing and enforcing just and reasonable rates, and all orders incidental thereto, absolutely independent of the provisions of Section 5. As this alleged obnoxious section relates wholly to actions between private parties and the Railroad Companies, it has and can have no application to, or effect upon, actions between the Public, represented by the Attorney-General, or some other law officer of the State, and the Railway Companies.

Conceding that the elimination of Sec. 5 would effect the right of action by private parties under the

act, does it therefore follow that the State would be unable to require, or should be prevented from, enforcing obedience to the findings and orders of her Commissioners through the penalties and fines provided, for which suit must be brought in the name of the State and by her law officer? It is apparent from an examination of the act that there are two distinct methods prescribed by which the Railways are to be kept in their operation within the limits of the law; the one by the individual aggrieved who can sue directly in courts for his damages, or complain before the Commissioners, who will examine and redress his grievances as prescribed in Section 9. The other method is by the State suing for the penalties denounced by the act for its violation, in which suit the private suitor can have no interest other than that which is common to the public, viz: the protection to be derived by the enforcement of the law. These two methods are obviously wholly independent of each other, and if it were true that the elimination of Section 5 would so affect Section 17 as to destroy the right of the citizen to bring private suits under the act, it could in no way affect the right of the State to bring suit or prosecute for penalties incurred for violations of the law.

Section 9 of the act provides the means of redress by the private citizen for any wrong suffered by any act of the Railroads which has been prohibited by the law. This redress is by a complaint and trial before the Commission, who may call upon the Rail-

roads to satisfy the damage done to the Complainant, if so found, or to pay the penalty of disobedience to be recovered in the name of the State of Texas. This is an effectiwe remedy provided for the private citizen to redress his wrong in which Section 5 has neither part nor lot.

Again, under Section 23 of the act it is provided that it shall not have the effect to release or waive any right of action of any person for any right, penalty or forfeiture which may have arisen, or may hereafter arise, under any law of this State. We submit then, that eliminating the objectionable clause as a rule of evidence in private suits against the Railroads, and if necessary Section 17, giving the right to bring these suits under the act, would not effect the right of the citizen of redressing his wrong, nor effect his common law right to sue for damages, nor his right under the Texas Act of 1879, to sue for the penalties for charging unreasonable rates, or for acts of discrimination and extortion.

Revised Statutes of Texas, Art. 4257 & 4258.

In a word, the act presents a complete law independent of section 5, for the remedy of the State for enforcing the law is not impaired by its existence, and the remedy of the citizen not impaired by its absence, other than in the probative force of his evidence when such is necessary. In concluding this branch of the case we venture the observation that if the right of the State to enforce obedi-

ence to the law by its Attorney-General and its name has not been impaired by this so-called unconstitutional section, upon what basis stands the extraordinary decree of the Circuit Court which forbids the Attorney-General from now or hereaftsr obeying the law and the Commission from giving him the information required by the law.

Under the issue as to the reasonableness of the rates we submit the following proposition:

That the basis alleged in the bill and cross-bill, that should control the Commission in fixing rates, to-wit: That they should be so fixed as to yield revenue sufficient to pay operating expenses, interest on all bonded indebtedness and some dividend on the stock issue, is not a proper and equitable basis and is not sufficient to support the conclusion drawn by Complainant and Cross Complainants; that because the rates fixed by the Commission will not yield sufficient revenue for the purposes aforesaid they are unreasonable and confiscatory.

STATEMENT.

Rec. p. 21. It is averred in the original bill that the prior mortgage indebtedness and the mortgage indebtedness held by Complainants and the stock capitalization represent the actual cost and reasonable value of the line of railway and its properties, and upon which the company and the Receiver are entitled to earn interest and dividends.

That said returns should not be less than a sum sufficient to provide for the entire interest on the bonded debt and the Commission can not lawfully or reasonably established rates and charges that will restrict the earnings so that it can not meet these requirements. This allegation was adopted by the cross-bill. Rec. p. 237.

AUTHORITIES.

Dow vs. Beidelman, 128 U. S. 680.

Winn vs. Ill., 94 U. S. 113, 161, 172.

Stone vs. Trust Ca., 216 U. S. 307, 325.

Chicago R. R. vs. Iowa, 94 U. S. 155.

Quincy R. R. vs. Cutts, 94 U. S. 155, 167.

Chicago R. R. vs. Wellman, 143 U. S. 339.

EQUAL PROTECTION OF THE LAW.

It is claimed that the Texas Act deprives the Railroads of the equal protection of the law.

In so far as this allegation is predicated upon the absence of due process in the Act, what has been heretofore said is applicable, and to the extent that it is predicated upon any special provisions of the law for the control of railroads, we submit that the constitutional requirement of (equal protection) is satisfied when the law complained of applies to all railroads.

AUTHORITIES.

Budd case 143 U. S. 517.

Dow vs. Beidelman, 125 U. S. p. 680.

Charlott Railroad vs. Gibbes, 142 U. S. p. 394.

Stone vs. Trust Co., 116 U. S. pp. 307-347.

M. P. Ry. vs. Hames, 115 U. S. p. 512.

Is every person coming within the circumstances and conditions designated by the law affected by it? Chicago R. R. vs. Iowa 94 U. S. p. 155-193.

TRIAL BY JURY.

It is further complained that in a suit by individual shippers under section 17 of the act the railroads are deprived of trial by jury on the issue of (reason-ableness).

This objection is also predicated upon the fact that the reasonableness of the rate fixed and sought to be enforced by the individual shipper was not determined or fixed by due process. On this branch of the case enough has been said. But it is submitted that this objection is not tenable because of the fact that the Constitution permits the Legislature to give to whatever agency it may establish such powers as may be deemed advisable. Under this provision it has been deemed advisable that the Com-

missioners should hear and determine the issues submitted without the intervention of a jury; but is to be observed that there is no such deprivation as complained of, because the Railroad if dissatisfied with the decision of the Commission can carry the issue of reasonableness of rate to a court of competent jurisdiction in Travis county, where under the laws and the constitutional provisions of the State every opportunity is provided to satisfy this pathetic yearning for trial by jury.

LIMITING THE REMEDY.

It is complained that under Section 6, the Railroads are limited to an affirmative proceeding in a single local court to test the reasonableness of the rate, which court it is claimed has no jurisdiction to entertain the petition.

The Railroads if dissatisfied with the judgment of the Commission can, under the Texas Act, file a petition in the nature of a petition in error in a court of competent jurisdiction in Travis County, setting up the particular cause or causes of objection to the Commission findings. By a court of competent jurisdiction was meant a court having jurisdiction of the amount involved. The very nature of the issues would necessarily involve a money value, and if less than $200, or between $200 and $1000, or in excess of $1000, the proper court would be determined under the laws and constitution of Texas. But assume that

it was possible that no money value was involved, the Constitution of the State declares (Art. 12, Sec. 8,) that the District Courts shall have general and original jurisdiction over all causes of action whatever, for which a remedy or jurisdiction is not provided by law or this Constitution, and such other jurisdiction, original and appellate as may be provided by law. Looking to the necessities of the Commission Act the Legislature of Texas established in Travis County two District Courts, so that no delay might ensue in determining the issues liable to arise under the law, and that the increased litigation by reason of the law would not interfere with the litigation between citizens of the county. As to the complaint of being limited to a single local court, we simply answer that they are courts of justice, of competent jurisdiction, indicated by the Legislature as the judicial channel through which the appeal of the citizens, as well as the Railroads, must pass to reach the courts of last resorts. (Bowman vs. Lewis, 101 U. S., p. 22).

REMEDY INADEQUATE.

It is complained that if the court had jurisdiction, the remedy is inadequate, because the trial provided may, or might, extend over a long period of time, and might last as long as one year, during which time great loss would be suffered by enforcing the rates.

If in good faith the railroads appeal from the

decision of the Commission to a court of competent jurisdiction in Travis county; and show that the rates fixed by the Commission are unreasonable and unjust; it is submitted that the general powers of these courts are not suspended by the act; the writ of injunction is ever with them to enforce their jurisdiction over a cause in their courts and to protect their litigants to the extent that the issue when determined will not be a barren victory to the one succeeding.

McMillan vs. Anderson, 95 U. S. p. 335.

Revised Statutes of Texas, Arts. 1335 and 2873, copy acts.

Art. 1335. * * * The judgment of the Court may be so framed as to give to the party all the relief to which he may be entitled in law and equity.

Art. 2873. Judges of the District Court and County Courts may either in term, time or vacation grant writs of injunction, etc. * * where pending the litigation it shall be made to appear that a party is doing some act respecting the subject of litigation, or threatens or is about to do some act in violation of the rights of the applicant which act would tend to render the judgment ineffectual.

-2. When the applicant is entitled to the relief under principle of equity.

But assume that an injunction could not be issued. It is not the business of the court to inquire into the wisdom of the law or the anticipated hardships which may arise during a suit to test the

accuracy of the judgment below. [H. & T. C. R. R. vs. State, 61 Tex. 344; 59 Tex. 185; Cooley Const. Lim. 5th Ed. 201, 202.] Its duty is to interpret if the Legislature has the power to pass. [U. S. vs. Western U. Tel., 50 Fed Rep. 42.] If the judgment be wrong, either the railroad or the public must bear the inconvenience, or loss if necessary, while waiting the action of the court under the law. The very constitutional provision invoked by the Appellees for protection from this inconvenience asserts with equal emphasis, that a citizen shall not be deprived of liberty, etc., and yet a citizen however innocent of the felony for which he has been convicted must await in prison without the privilege of bail the action of the higher court upon his appeal from an unjust conviction. Such is the law in Texas and yet none doubt its constitutionality. But the act is framed to prevent this possible contingency. The rates cannot be enforced in less than twenty days after being fixed and in the discretion of this Commission may be suspended for any length of time. The appeal to the courts may be had as soon as the rate is announced. Within ten days it stands ready for trial with right of way and if this decision be reversed, and an appeal therefore can at once be taken to the court of last resort of the State, all of which courts are required to lay all other matters aside and decide said cause, and these proceedings are without bond of any character. The law was framed upon the principle that delay and extended litigation would be fatal to

Schutler, 110 U. S., is not as to the penalties to be inflicted, but as to the power to fix the rates and establish the charges as provided in the act.

CHARTER RIGHTS.

In an amendment filed in the bill, it was alleged that an act of the State of Texas, passed February 7, 1854, (set out on page 259 of the record), was a part of the Charter contract between the Railroad Company and the State of Texas, and the bond holders, because the Railway was chartered and with the exception of 200 miles was constructed while the act was in effect, and it is inferred, though not alleged, that the Commission rates having reduced the net profits of the Railway below 12 per cent. impaired the obligation of the contract.

The act above referred to is not an act of 1854, but an act passed February 7, 1853, at a special session of the Legislature, and to be found on page 55 of the Special session Act. It was a general Acts imply regulating, and not organizing, Railroads. It was enacted under the Constitution of 1854, which contained this provision:

"Art. 7, Sec. 31: No private corporation shall be created unless the bill creating it shall be passed by two-thirds of both houses of the Legislature; and two-thirds of the Legislature shall have power to revoke and repeal all private corporations, by making compensation for the franchise, etc."

The act contained 20 sections, the 1st and 15th sections of which are referred to by complainants.

The act was amended December 9, 1857. (Sayles Early Laws, Vol. 2, Arts. 2349 and 2660).

In 1866 a new constitution was adopted and section 36 of Art. 7 providing for a system of internal improvements repealed the Act as amended in 1857. Sayle's Texas Statutes, Vol. 4, p. 324. Again in 1876 still another Constitution was adopted with the various provis ons as set forth on page 1 and 2 of this brief, and in pursuance of the Constitutional provisions of 1876, general laws for the organization and regulation of railroads were passed. In August 1876 the first general law for the organization and regulation of railroads was passed; Sayles Early Laws, Vol. 3, pp. 447-448. Art. 4238. By sections 23 and 28 of this act the Legislature reserved the right to regulate the charges of freights, and to correct abuses and to establish reasonable maximum rates, and to enforce them by penalties to the extent of forfeiting their charter. At the same session to-wit: on August 16, 1876, 16 sections of land to the mile were granted to all railroads in course of construction, and in section 3 of the same act it was provided that the State retains the right to regulate the freight on all accepting lands under the provisions of this act. Sayles' Early Laws, Vol. 3, Art. 4242 p. 449.

The general Act regulating railroads was amended April 1879 by fixing the maximum of charge. Revised Statutes of Texas, 4242.

its efficiency, aad on its face appears the unmistakable purpose that a railroad honestly desiring to obey the lawr of the land and have the reasonableness of the rates determined by the courts may under these provisions for expediting the cause have a final determination within the time provided by law for the enforcements of the rates. But assume that they could not and were honestly contending for a final decision under the law, it cannot be assumed that the discretion of the Commissioners with reference to the time of enforcing its orders and decisions would be appealed to in vain, or that the equitable jurisdictions of these courts could not be invoked.

LEGISLATIVE, EXECUTIVE AND JUDICIAL POWERS.

It is clatmed that the law combines in the Commission judicial, legislative and executive powers, contrary to Art. 2, Sec. 1, of the State Constitution.

We have heretofore endeavored to show that every act of the Commission to have the force of law must first be determined by judicial proceedings; that they made no law in the sense of legislation, and the only power granted that partakes of an executive nature are found in Section 9, where they are required to have their decisions enforced, and in Section 21, where they are charged with the entire supervision of the entire body of the act; but every duty required is with reference to some matter that has been first by

them judicially determined, and then the duty required by these sections extends simply to furnishing information to the law officers of the State upon which to base prosecutions for disobedience. But assume that the combination does exist, the very article and section of the Constitution invoked by Complainants permit the combination if permitted by any other provision of the Constitution. The Legislature in creating the Commission, was authorized by the Constitution to invest it with such powers as may be deemed adequate and advisable.

AUTHORITIES.

Storrs vs. Pensacola R. R., 11 Southern Rep. 229, 230.

McWhorter vs. A. R. Co., 5 Southern Rep. 129.

Chicago R. R. Co. vs. Dey, 35 Fed. Rep. 872.

Atlantic Express Co. vs. Wilmington & W. R. Co., 16 Southeastern Rep. 393.

PENALTIES.

As to the complaint of excessive penalties it was held by this court, upon a similar objection, that penalties were highly beneficial and necessary. (Charlotte R. R. vs. Gibbs, 142 U. S., p. 394).

But it is submitted that the true question here, as said by Chief Justice Waite in Waterworks vs.

Schutler, 110 U. S., is not as to the penalties to be inflicted, but as to the power to fix the rates and establish the charges as provided in the act.

CHARTER RIGHTS.

In an amendment filed in the bill, it was alleged that an act of the State of Texas, passed February 7, 1854, (set out on page 259 of the record), was a part of the Charter contract between the Railroad Company and the State of Texas, and the bond holders, because the Railway was chartered and with the exception of 200 miles was constructed while the act was in effect, and it is inferred, though not alleged, that the Commission rates having reduced the net profits of the Railway below 12 per cent. impaired the obligation of the contract.

The act above referred to is not an act of 1854, but an act passed February 7, 1853, at a special session of the Legislature, and to be found on page 55 of the Special session Act. It was a general Acts imply regulating, and not organizing, Railroads. It was enacted under the Constitution of 1854, which contained this provision:

"Art. 7, Sec. 31: No private corporation shall be created unless the bill creating it shall be passed by two-thirds of both houses of the Legislature; and two-thirds of the Legislature shall have power to revoke and repeal all private corporations, by making compensation for the franchise, etc."

The act contained 20 sections, the 1st and 15th sections of which are referred to by complainants.

The act was amended December 9, 1857. (Sayles Early Laws, Vol. 2, Arts. 2349 and 2669).

In 1866 a new constitution was adopted and section 36 of Art. 7 providing for a system of internal improvements repealed the Act as amended in 1857. Sayle's Texas Statutes, Vol. 4, p. 324. Again in 1876 still another Constitution was adopted with the various provis ons as set forth on page 1 and 2 of this brief, and in pursuance of the Constitutional provisions of 1876, general laws for the organization and regulation of railroads were passed. In August 1876 the first general law for the organization and regulation of railroads was passed; Sayles Early Laws, Vol. 3, pp. 447-448. Art. 4238. By sections 23 and 28 of this act the Legislature reserved the right to regulate the charges of freights, and to correct abuses and to establish reasonable maximum rates, and to enforce them by penalties to the extent of forfeiting their charter. At the same session to-wit: on August 16, 1876, 16 sections of land to the mile were granted to all railroads in course of construction, and in section 3 of the same act it was provided that the State retains the right to regulate the freight on all accepting lands under the provisions of this act. Sayles' Early Laws, Vol. 3, Art. 4242 p. 449.

The general Act regulating railroads was amended April 1879 by fixing the maximum of charge. Revised Statutes of Texas, 4242.

It does not appear from the record when the charter of the Railroad Company; the cross complainant in this suit was issued, nor are we enlightened as to its terms or provisions, but it does appear that that the bonds of this Company held by the Complainant were issued five years after the Constitution and laws of Texas regulating the rates were adopted and passed, and under, and in pursuance of which the railroads of Texas operated up to the Commission act.

But assuming that the act of 1803 was in force while the company was constructing a part of its road it is respectfully submitted that such a general law merely regulating railroads could not have become a part of the charter contract with the State. There is a plain distinction between a legislative enactment permitting corporations to exercise certain rights, or requiring the Legislature to exercise certain rights with reference to corporations, and a contract made by the State through its Legislature. Any right, privilege or immunity conferred upon a corporation in the exercise of a power to make the contract would be binding, but the creation of immunities by general law and merely in the exercise of the law making power of the Legislature would not bind subsequent Legislature. [Morawetz Private Corporations, 2nd Ed., Sec. 1050, et seq. Again, it is submitted that the power to regulate public highway is in the nature of a police power in the exercise of of which no Legislature can curtail the authority of its succes-

sors by an irrevokable grant as is herein claimed as a charter right; at least, this could not be done through the medium of general laws. [Stone vs. Trust Co., 116 U. S. p. 307.] It is further submitted that to control the future action of a sovereign power in the regulation of railroads, the right granted must be conferred in the charter; the franchise must be bargained away by words of positive grant under the power to contract, otherwise there could be no guarantee that the system of laws would remain as they were at the date of the charter.

In the case of the State of Texas vs. Southern Pacific Ry. Co. 24 Tex. 80-131. Suit was brought by the Attorney-General of the State to forfeit the charter of the Defendant Company for failure to make to the Comptroller of Public Accounts the annual reports required of all railway companies, and for several other causes set forth in the petition. The Constitutional provision of 1845 above referred to to-wit: Section 31 of Art. 7 was the source of Defendant's charter and was plead as an objection to the action by the Attorney. General because as claimed the Constitution provided the only means by which the charter could be forfeited or revoked, but particularly it was snsisted that the causes for which the forfeiture was sought were enacted by the Lenislature by general laws after the charter had been granted and the company organized under the Consti-

tution of 1845, and therefore, in so far as these general laws were attempted to be enforced against the Defendant company they impared the obligation of the charter contract.

Roberts, Justice, in delivering the opinion of the court directly construes the article of the Constitution of 1845, and says, among other things, that it was intended as a direct assertion of supremacy over corporations only subject to the conditions therein contained; and with reference to the effect of laws regulating Railroads, passed after the charter had been granted and the Company organized, he says in substance, page 123, that the view that Statutes regulating the conduct of Railroads passed after the grant of the charter and the organization of the Company, adds new stipulations to the charter, or impairs the obligation of the charter contract, is erroneous and falacious; that the rights granted by the State are limited by the charter, and unless the charter contains a stipulation to the contrary the Corporation will be subject to general laws, as other property, and it may be regulated, though not destroyed, by subsequent legislation. Again, on page 123 he says, that the legislative control continues as far as is consistent with the interest granted, and may be necessary to the public use. Again, on page 127 it is said, that in charters of this description, no rights are taken from the public or given to the Corporation beyond those in the charter; and on page 129 he says, a contract is not impaired in its obligation unless some right which has

been granted in it, has been defeated or abridged, etc.

We think this proposition can be clearly deduced from the decisions of this court. In R. R. vs. Cutts 95 U. S., Chief Justice Waite says: It was within the power of the Company to call upon the Legislature to fix permanently this limit and make it a part of the charter, in such case the charter might have presented a contract against legislative interference, but it was not done and the capital was invested relying on good faith of the people and the impartiality of future legislation. In Ruggles vs. Ill., 108 U. S., the Board of Directors empowered to establish such rates of toll as they may determine did not exclude the power of the State to fix rates. So in Spring Valley Waterworks vs. Schuttler, 110 U. S. 347-348, the corporation was formed before the Constitution of 1879was adopted and authorized to charge such rates as were fixedby a Commission whose selection was to be made in a specific manner, but in which the Company was to co-opearte, under the constitution of 1879 of California. The State required the Commission to be selected in a different manner and without the co operation of the Company. This Court held that the constitution of California authorizing the change was not obnoxious to the constitution of the United States as it did not enjoin the obligation of the charter contract. Chief Justice Shaw in 9 Cushing, 609, says: That the superintending power of the Legislature extends over corporations except in so far of exempted by the provisions in their charter

and that while the charter was taken subject to general laws yet it was also subject to any change. The regulation of charges for freight and passenger traffic effecting commerce is as necessary to be maintained guarded and exercised by the sovereign power of the State as are the rights of eminent domain, taxation or any of the recognized police powers affecting the health, morals and public interest of the people, and particularly in the light of the fact that in the management of these highways, competition has been swallowed up by combination and monopoly ever threatening the essential interest of the community. That the immunity claim must be a direct grant in the charter, is supported by the following authorities:

Pennsylvania R. R. vs. Miller, 132 U. S. 76.

Chicago R. R. vs. Loomis, 13 Ill. 598.

Sinking Fund Cases, 99 U. S. 720.

Miller vs. State, 15 Wallace, 498.

Stone vs. Trust Co., 116 U. S. 307.

Bailey vs. Maguire, 22 Wallace 215.

R. R. Co. vs. Pendleton, 11 So. E. Rep. 1062.

It is not shown as stated when the charter was granted or whether the Corporation was organized under a general law or by special act of the Legislature nor does the record show as before stated what provisions are contained in it, yet the court is asked because of the existence of a general law

passed in 1854 not providing for the creation or organization of Railroads, but simply for their regulation, it must presume that the State has in this law surrendered its power of control over corporations, erganized prior or after the passage of the law. We respectfully submit that the whole presumption is otherwise.

CHAS. A. CULBERSON, Attorney-General,
HY. C. COKE,
W. S. SIMKINS,
COUNSEL FOR APPELLANTS.

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S.

The Texas Railroad Commission Law.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.

JOHN H. REAGAN, W. P. McLEAN, L. L. FOSTER, AND C. A. CULBERSON, APPELLANTS,

against

THE FARMERS' LOAN AND TRUST COMPANY AND THE INTERNATIONAL AND GREAT NORTHERN RAILROAD COMPANY, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

ARGUMENT FOR APPELLANTS.

CHARLES A. CULBERSON,
Attorney General of Texas.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

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against

THE FARMERS' LOAN AND TRUST COMPANY AND THE INTERNATIONAL AND GREAT NORTHERN RAILROAD COMPANY, APPELLEES.

STATEMENT OF THE CASE.

On April 30, 1892, the Farmers' Loan and Trust Company, a corporation organized under the laws of the State of New York, filed its bill in equity in the United States circuit court for the western district of Texas, at the city of Austin against John H. Reagan, W. P. McLean, and L. L. Foster, constituting the "Railroad Commission of Texas" under the act approved April 3, 1891; C. A. Culberson, the attorney general of Texas; the International and Great Northern Railroad Company, a corporation organized under the laws of the State of Texas, and T. M. Campbell, receiver of the property of said railroad company, all defendants being citizens of Texas. The history and material facts of the case may, for the purposes of this argument, be thus summarized:

First.

The allegations in the bill of complaint are substantially as follows:

(1) The Farmers' Loan and Trust Company is the trustee of the second-mortgage bonds of the International and Great Northern Railroad Company, aggregating seven million and fifty-four thousand (87,054,000) dollars, which bear six per cent. interest.

(2) The second-mortgage bonds are subordinate to the first-mortgage six per cent. bonds, aggregating seven million nine hundred and fifty-four thousand (87,954,000) dollars, and eighty-five thousand five hundred (885,500) dollars of eight per cent. bonds, known as the second-mortgage income bonds of the railroad company.

(3) All of the indebtedness and obligations of the railroad company mentioned are outstanding, except that eighty-five thousand five hundred (885,500) dollars of the second-mortgage bonds are deposited with the trustee to retire the said eighty-five thousand five hundred (885,500) dollars of second-mortgage income bonds.

(4) The International and Great Northern railroad at the institution of this suit was in the hands of T. M. Campbell, receiver, appointed by the district court of Smith county, Texas, and had been, since February 16th, 1889, in the hands of receivers.

(5) The only allegation on the subject of an effort on the part of the trustee to induce the receiver or the railroad company to institute the suit is that the trustee "has requested the defendant receiver to refuse to recognize, adopt, or enforce the unfair and unreasonable rates prescribed in said schedule; but said receiver declined to so refuse, and

said receiver has adopted said rates so far as the same have been declared effective by said commission, and intends and proposes to adopt any rates already announced, but not yet effective under the terms of said schedules, and to put the same in force and effect, upon the ground that, under said act of April 3, 1891, he would otherwise be defenseless against the multiplied penalties recoverable at the suits of individual shippers and the additional penalties recoverable in actions instituted by the defendant Culberson; said receiver fearing that the consequences of such refusal might thus be even more disastrous and ruinous than the operation and effect of said unreasonable rates. Your orator further alleges that it has been requested by the holders of more than a majority in amount of said second-mortgage bonds of said railroad company to bring this, its bill of complaint, for the relief herein sought, and that its action in this behalf is taken in response to and in compliance with said request."

(6) The twenty-second legislature of the State of Texas passed an act, approved April 3, 1891, creating "The Railroad Commission of Texas," pursuant to the constitutional amendment adopted November 5, 1890, and appellants Reagan, McLean, and Foster were appointed commissioners thereunder, and the commission was duly organized June 10th, 1891. Charles A. Culberson is the Attorney General of the State of Texas.

(7) On June 20, 1891, the general freight agent of the receiver of the International and Great Northern railroad, as well as the agents of all other companies in the State to be affected, was notified by the commission through the mail that on July 6, 1891, it would "begin and continue from day to day, until completed, the classification and subdivision of all freight and property of whatsoever character that may be transported over the railroads of this

State into such general and special classes or subdivisions as may be found necessary or expedient, and the fixing for each class or subdivision of freight a reasonable rate for each railroad, subject to this act, for the transportion of each of said subdivisions or classes; also that at the above-named time and place a special classification, and rates of charges thereon, of *cotton, grain, lumber, and salt will be made*. Your attention is also called to section 8 of the act aforesaid, which provides that, in all cases where the rates shall not have been fixed by the commission, no changes shall be made, except after ten days notice to and consent of commission. Therefore the changing of any rates in force June 10, 1891, except after notice as above provided, and the consent of the commission, is unlawful." In connection with this notice it is alleged that the receiver was not informed of the changes in the rates contemplated by the commission; that the general freight agent and other representatives appeared before the commission at the time, and place named in the notice quoted and requested the commission to indicate the rates proposed to be fixed and the changes to be made in existing rates, in order that the receiver might have an opportunity to produce appropriate and material evidence, which request was refused; that consequently the receiver was unable to produce testimony appropriate or material to any possible action of the commission; that the agents and representatives of the receiver did at said time present such information of a general character to the commission as to them in any way seemed appropriate or material to the matters upon which the commission had indicated its purpose to act, and as far as possible gave all information requested or suggested by the commission as material to such matters; that shortly afterwards there appeared in the newspapers a statement, believed to have been authorized by the commission, to the effect that the commission invited representatives of towns and cities, boards of commerce, or individuals who might desire to

present any matter or complaint to the commission to be present on and after July 6, 1891; that the receiver did not waive the giving of any notice required by law, but his agents merely appeared before the commission as did other citizens of the State who had any interest or concern in its proceedings; that the commission did not fix rates at the session of July 6, but adjourned and deferred action and terminated its session without action and without adjournment to any specified day; that thereafter and subsequent to July 29, 1891, the general freight agent of the receiver received through the mail a communication from the commission, enclosing a proposed schedule of rates on *corn, wheat, rye, barley, oats, bran, mill feed, mill stuff, hay, flour and meal in sacks or barrels, and salt in sacks or barrels,* accompanied by a notice dated July 29, 1891, that said rates were proposed by the commission to the general freight agents of the several railroads in Texas for their consideration and such suggestions as they might see proper to make prior to August 5, at which time action would be taken on the proposed schedule of rates; that thereafter and subsequently to July 30, 1891, the receiver received through the mail communications from the commission, dated July 30 and 31, enclosing proposed rates on *lumber, shingles,* and *cotton,* stating that action would be taken on the schedule of rates proposed August 6 and 7, respectively; that the communications of July 29, 30, and 31 did not give ten days' notice and the commission was requested to extend for ten days the time for hearing prescribed by said notices, which request was refused; that although ten days' notice was not given the agent of the receiver appeared before the commission and produced statements, showing the unjust, unreasonable, and illegal character of the proposed rates and that the commission did not fix rates on said articles or any rates whatever at the times and place named in said notices; that thereafter the general freight agent of the receiver received from the commission through the mail the several

communications, schedules, copies of commodity tariffs, and circulars, copies of which are set out in Exhibit "C" made part of the bill; that, in addition to the communications heretofore referred to, the general freight agent of the receiver has received frequent informal communications from the commission, relating to the tariffs, orders, and action of the commission and to the duties, liabilities, and action of the railroad companies in respect thereto, and said agent of the receiver has sent to the commission numerous statements and protests, relating to the action proposed and taken by the commission in the making and announcement of its various tariffs and orders complained of; that the commission has never served or caused to be served on the railroad company or receiver any certified copy of its purported tariffs or either of them, the only service being by mailing to the general freight agent mimeograph copies of said tariffs, yet the commission and attorney general and divers other persons are seeking and attempting to force the railroad company and the receiver to put and continue the same in effect and threaten and propose to enforce the same by suits, actions, and penalties prescribed by the act; that the commission without further or other notice than those set forth are proposing and threatening and proceeding to make and announce other and further schedules of rates upon other commodities; that the said schedules of rates are promulgated by the commission and are intended as schedules of the rates of charges for the transportation of the articles named, which the commission assumes to establish under the authority of the act approved April 3, 1891; that the commission threatens, under the penalties of said act, to compel the railroad company and receiver to adopt said schedules of rates of charges for the transportation of said articles over said railway, and that said receiver has adopted the same so far as they have become effective and proposes to adopt and unless restrained by order of the court will adopt those still to become effective; that none of the

rates promulgated by the commission were fixed at any time or place whereof the railroad company or receiver had ten days' notice, or any specific notice whatever, and that the communications from the commission referred to constitute the sole and only notice to said company or receiver; that during the hearings before the commission it was proposed to the commission that if it would grant a reasonable time estimates would be made, showing the movement of each of the commodities upon which it was proposed to make tariffs, the rates then charged, and the revenue derived therefrom, and showing the revenues which would have been derived therefrom if the proposed tariffs had been applied thereon; that said statement would not only have shown the effect of said proposed rates, but the commission could have easily derived therefrom a knowledge of the effect upon the revenues of railway companies of any system of rates under consideration, and the commission declined said offer and proceeded to establish said schedules without having secured any reasonable data, statistics, or information to approximate with any degree of accuracy the effect of any of the rates considered or established, and that at the sessions of the commission no witnesses were sworn and no evidence introduced, no experts were appointed, no evidence was adduced that the existing rates were too high, and the schedules of rates were established without evidence that they were reasonable and against the showing made by the receiver that they were unjust and unreasonable.

(8) That the classifications and schedules of rates promulgated by the commission are unfair, unjust, and unreasonable, and cannot be adopted or put or continued in effect by the railroad company or receiver without serious and irreparable loss to the company and serious and irreparable injury to and destruction of the property, rights, and interests of the trustee and the beneficiaries of its trust; that the said rates are not compensatory and are unreasonably low,

and that the enforcement thereof would result, as nearly as can be estimated, in a diminution of revenues aggregating two hundred thousand dollars per annum, and that the revenues so reduced would be inadequate to provide for the payment of the interest upon the prior obligations of the railroad company and the interest upon the second-mortgage bonds after providing for the expenses of operating the railway; that the railroad of the company has no other or different value or use than as railway property, and that the value of the lien thereon and of the property, rights, and interest therein is determined and fixed by the earning capacity thereof; that the enforcement of said rates would result in serious reduction of the value of the railway and a serious reduction of the earnings thereof, thereby impairing, taking, and destroying to that extent the investment under the second-mortgage bonds; that at the filing of the bill and for two years prior thereto the interest on the first and second-mortgage bonds was in default by reason of the inadequacy of the earnings and extraordinary renewals; that the trustee is informed that the mortgage indebtedness and the stock capitalization of the railroad company represent the actual cost of the construction, acquirement, and equipment of the railway and property and the reasonable value thereof and the amount upon which the company is entitled to earn full and fair returns in interest and dividends; that such returns should not be less than a sum sufficient to provide for the entire interest on the bonded debt of the company, and the commission may not lawfully establish rates which will restrict the earnings of the company so that it will be unable to meet these requirements, and that by reason of the acts complained of the trustee and the beneficiaries of its trust are and will be deprived of their property, rights, and interests without due process of law, in violation of the Constitution and laws of the United States and of the State of Texas.

(9) That each and all of the rates, charges, and classifications prescribed by the receiver in force when the several tariffs of the commission were promulgated were in no case unreasonably high nor in restraint of a free movement of the commodities thereby affected, were far less than the rates for like transportation prior to the construction of the railway, and were not sufficient to enable the railroad company to pay the interest upon its bonds; that said rates and charges were fixed by the receiver with careful regard for the financial, commercial, and competitive conditions and laws which enter into, affect, or control the making and relative adjustment of rates in the State of Texas, and yet the receiver during the year 1890 earned from the operation of the railway only the sums hereinafter stated, and therefore a reduction of said rates would be unjust and unreasonable and in effect a confiscation and appropriation to the use of others of a portion of the capital invested by the beneficiaries of the trust, and a taking of the property of said railroad company, the trustee, and beneficiaries without due process of law and not in due course of law and without adequate compensation, contrary to and in violation of section 1 of article XIV of the amendments to the Constitution of the United States and sections 17 and 19 of article I of the constitution of the State of Texas.

(10) A statement of the income account is given, and it is alleged that by a reduction of rates there will be no compensatory increase in the business and tonnage of the railroad, and that the trustee is informed that there will be no appreciable or substantial increase in such business or tonnage. The debits and credits of the income account mentioned for the times given, to wit, the years 1889 and 1890 and for nine months ending September 30, 1891, are as follows:

1889.

DEBIT.

To Operating Expenses.

Conducting transportation	$754,415 61	
Motive power	811,196 09	
Maintenance of way	755,074 16	
Maintenance of cars	183,056 44	
General expense	125,710 60	
		$2,629,452 90
Surplus earnings		858,732 24
		$3,488,185 14

CREDIT.

By Earnings.

Freight	$2,575,165 46	
Passenger	728,505 03	
Mail	92,678 11	
Expsess	65,664 39	
Rent	4,267 71	
Miscellaneous	21,904 44	
		$3,488,185 14
		$3,488,185 14
Surplus earnings brought down		$858,732 24

1890.

DEBIT.

To Operating Expenses.

Conducting transportation	$865,238 96	
Motive power	944,677 71	
Maintenance of way	957,394 42	
Maintenance of cars	249,634 98	
General expense	131,299 02	
		$3,148,245 09
Surplus earnings		498,177 24
		$3,646,422 33

CREDIT.

By Earnings.

Freight	$2,591,956 00	
Passenger	859,257 07	
Mail	102,756 52	
Express	66,712 08	
Rent	2,997 65	
Miscellaneous	22,743 01	
		$3,646,422 33
		$3,646,422 33
Surplus earnings brought down		$498,177 24

1891.

For nine months ending September 30, 1891.

DEBIT.

To Operating Expenses.

Conducting transportation	$703,200 98	
Motive power	728,922 62	
Maintenance of way	683,352 65	
Maintenance of cars	172,761 95	
General expenses	90,117 36	
		$2,378,355 56
Surplus earnings		99,649 79
		$2,478,005 35

CREDIT.

By Earnings.

Freight	$1,679,768 07	
Passenger	635,696 17	
Mail	91,123 10	
Express	55,722 14	
Rent	1,631 00	
Miscellaneous	14,064 87	
		$2,478,005 35
		$2,478,005 35
Surplus earnings brought down		$99,649 79

(11) That the injurious effect of the establishment of said unjust and unreasonable rates would not be limited to the business of the receiver transacted in Texas, because it is alleged interstate rates are based upon the rates prevailing between Galveston and interior points in Texas. The interstate rates are controlled and determined by water competition—that is, the water rates between foreign or Atlantic seaboard points and Galveston added to the local rates between Galveston and other Texas points make the rates which the interstate lines are compelled to meet or adopt, and therefore a reduction of local rates would cause a reduction of interstate rates.

(12) The validity of circular 34, issued by the commission, is attacked upon the ground that it amounts to a taking of property without consent, without compensation, without due process of law, and is a regulation of interstate commerce. The circular is as follows:

"*Circular No.* 34.

"OFFICE OF
"RAILROAD COMMISSION OF TEXAS,
"AUSTIN, TEXAS, *November* 6, 1891.

"The following rules and rates are hereby established to govern the reception, delivery and transportation of loaded cars from point to point on all railroads within this State, and shall become effective November 27, 1891.

"First—When any railroad may wish to have a loaded car or cars hauled to any point on a connecting line or over a connecting line or lines to some point on any of such connecting lines; or when any other party may wish to have a loaded car or cars hauled over any railroad to a point over its lines or to a point on any connecting line or lines, such loaded cars shall be tendered to the road which it may be desired by such railroad or other party to receive such loaded cars at a station on its line, and on its track if such receiving road shall so desire and demand.

"Second—When such loaded cars shall be so tendered, it shall be received and transported to its destination by the

road to which tendered, if destined to a point on its line, and if destined to a point on some connecting line or lines, then it shall be transported to the next connecting line in the route over which shipped, and delivered to such connecting road to be transported to the point of destination.

"Third—The rate of transportation on loaded cars so tendered shall be upon the commodity or property with which they are loaded without regard to the fact as to what road said cars belong; and the rates shall be the same as are established or in use for like commodities when hauled in the cars belonging to the roads over which the same are hauled.

"Fourth—The provisions of this circular shall apply only to loaded cars which have arrived at the point of original destination and which it may become necessary or desirable to reship to another destination within this State without unloading, and to such as may be loaded at the point when tendered for shipment.

"Fifth—Every railroad company hauling loaded cars destined to be carried to a point on a connecting line or to be carried over a connecting line or lines, and upon which through bills of lading to the points of destination have not been given by the road upon which the same originated, shall deliver said loaded cars at the designated point of junction with the connecting line to the road over which said loaded cars are to be carried without unloading the same if so requested, and the road or roads on or over which such loaded cars may be carried shall pay to the road owning the cars the established rate for the use of such cars; and when such cars shall have been unloaded, the same shall be returned to the road to which they belong by the road or roads so using them, free of charge to the owner."

(13) The validity of section 5 of the act of April 3, 1891, creating the railroad commission is attacked and is alleged to be invalid because (1) it makes the rates conclusively reasonable in suits by private parties until adjudged otherwise in direct proceedings under sections 6 and 7 and is a deprivation of property without due process of law, (2) is a denial of the right of jury trial, (3) that pending the direct proceedings provided for, unless the rates are enforced,

the receiver will be subject to innumerable suits by private parties and the imposition of heavy penalties, (4) that the remedy given to sue in Travis county is without effect and contrary to the constitution of Texas, and (5) if said remedy be held legal it is inadequate.

(14) That the penalties denounced by the act are immoderate, unreasonable and excessive.

(15) The second mortgage, a copy of which is attached to and made part of the bill, contains a provision authorizing the trustee upon default in the payment of the interest or principal of the bonds to take actual possession of the railroad and property of the company and manage and operate it.

(16) The tariffs issued by the commission and attached to the bill state that all railroad companies affected appeared before the commission, pursuant to the several notices, and had a full hearing upon the subjects upon which tariffs were fixed.

(17) These tariffs, orders and circulars also show that the first tariff established by the commission was issued August 13, 1891, and became effective September 9, 1891. At the time this suit was instituted and when the preliminary injunction was granted, the commission had only fixed carload rates on articles which constitute about one-half of the total tonnage of the Texas roads, with three exceptions, and of this, twenty-five per cent. was interstate to which the rates did not apply. With these exceptions it had not established rates on less than car-loads. In revenue-producing capacity the articles on which the commission had fixed rates yield only about thirty per cent. of the whole revenue of the roads, and on the remaining seventy per cent. the rates voluntarily fixed by the companies were in force. It therefore follows that whatever reduction had been made

by the commission was on articles transported in car-loads, with the exceptions pointed out, which yield only thirty per cent. of the revenue of the companies. The commission did not establish passenger rates.

(18) The prayer of the bill is (1) that the receiver and railroad company be enjoined from putting or continuing in effect the tariffs fixed by the commission, (2) that the commission and attorney general be restrained from instituting or causing to be instituted suits against the receiver or railroad company for the recovery of penalties, (3) that all other persons, individuals or corporations be also so restrained, (4) that the commission be enjoined from making, issuing or delivering to the receiver or railroad company any further tariffs, circulars or orders, and that (5) all tariffs, orders or circulars theretofore issued by the commission be cancelled and the commission be commanded to recall and abolish the same.

Second.

The International and Great Northern Railroad Company filed its answer June 14, 1892, *and its cross-bill* June 18, 1892. By the answer the allegations of the original bill are confessed and the material averments of the cross-bill are the same as those of the original bill. In fact in many particulars the cross-bill appears to be a copy of the original bill. There are some additional averments, however; among them, that the company has outstanding stock to the amount of $9,755,000 out of an authorized capital stock of $25,000,000, and the income account is brought down to March 31, 1892, showing surplus earnings for the past fifteen months of $363,528.87. The relief asked is the same as in the original bill, and is against appellants only.

Third.

The answer of appellants, duly verified, was filed July 4, 1892. Among other things it was shown *from the books of the receiver*, though this fact cannot be used on this appeal, that the freight earnings of the railroad for the seven months ending March 31, 1892, during which the commission rates complained of were in effect, exceeded the freight earnings for the corresponding preceding period by the sum of $98,029.40.

Fourth.

This case, with four others, *was heard on motion for a temporary restraining order* on the bills, answers and affidavits before Judge A. P. McCormick, one of the circuit judges for the fifth circuit, and on August 22, 1892, the law was declared void and relief granted in all respects as prayed for. (Mer. Trust Co. *v.* T. & P. Ry. Co. *et al.*, 51 Fed. Rep., 529.)

Fifth.

The original and cross bills were amended March 23, 1893, without verification, and in each amendment it is alleged that the railroad cost more than $50,000 per mile, and could not be replaced for less than $30,000 per mile; that it has always been operated economically; that for the year ending June 30, 1892, the railroad company employed 17 general officers, who received an average daily compensation of $12.64, and exclusive of its general officers all of its employés for that year received an average daily compensation of $2.01; that its employés were secured as cheaply as practicable and its supplies and material at the cheapest market price; that the total losses to the company by reason of tariffs named from September 14, 1891, to August 31, 1892, were $159,694.51; the average reduction of rates

on commodities named is given; that the reduction of rates will not cause an increase in tonnage; that if the rates fixed by the commission are in force for the entire year it would entail loss in revenue exceeding $369,000 per annum; that on February 7, 1854, the legislature of the State of Texas passed an act which, among other things, provided that the legislature should have power to prescribe railroad rates every ten years, *provided* no reduction should be made unless the net profits of the company for the previous ten years, the expenditures of the company being *bona fide*, should amount to a sum equal to 12 per cent. per annum upon its capital stock, and then so as not to reduce the future probable profits below said per centum; that the railroad company was incorporated and the road constructed, with the exception of 200 miles, while said act was in effect, the same not being repealed until the revision of the laws of Texas in 1879; that said act was never expressly repealed, but was and is a part of the "charter contract between the railroad company, the State of Texas and the bondholders," and that the rates were put into effect under protest, and "your orator company" printed thereon: "This tariff was issued by order of the Railroad Commission of Texas under protest, reserving the right to contest the same in the courts."

Sixth.

Subsequent to the preliminary hearing a great mass of testimony was taken. It being apparent that the enormous record could not be prepared for appeal within time for submission to this Court at the term then in session, and believing the course adopted would attain that object, appellants asked leave to *withdraw their answers and demur to the orginal and cross bills and amendments thereto*, which was granted. Demurrers were accordingly interposed and are as follows:

Demurrer to Bill and Amendment.

"These defendants, by way of protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner and form as they are herein set forth and alleged, demur to the bill of complaint, and for causes of demurrer show:

"That said complainant hath not in and by said bill made or stated such a cause of action as doth or ought to entitle it to any such relief as is thereby sought and prayed for against these defendants. Wherefore these defendants pray judgment of this honorable court whether they shall be compelled to further answer, and pray to be dismissed with their costs.

"And for specific causes of demurrer to the sufficiency of the various allegations of the said bill defendants say:

"1. That it does not appear from the allegations of said bill that the complainants have any interest in the subject-matter of the complaint and in equity cannot demand the relief sought in the prayer of said bill, because the injury complained of is too remote, and the bill shows no legal damage to complainant, because the relief asked by complainant in effect deprives the railway company of the management of its own affairs and substitutes the judgment of the court for that of the directory of the railway company.

"2. Because it appeareth from the face of said bill that complainants have a plain and adequate remedy at law.

"3. Because it appeareth from the face of the bill of complaint that the suit is against the State of Texas and consequently obnoxious to the 11th amendment of the Constitution of the United States.

"4. Because it appeareth from the face of the bill of complaint that complainant seeks to enjoin the judgment of a special tribunal of the State of Texas, said tribunal having jurisdiction under the constitution and laws of Texas to try and determine the special matters sought to be enjoined, and from which judgment a plain and adequate remedy by appeal had been granted to all parties interested by the laws of Texas.

"5. Because it appears from the bill that complainants seek to stay judicial proceedings when necessary to be

brought under the laws and in the name of the State of Texas in the courts of Texas.

"6. Because it appears upon the face of said bill that the complainant seeks to enjoin the attorney general of the State of Texas from bringing any action or enforcing penalties against the defendant railway company, provided by law to enforce obedience upon the part of the defendant company to the laws of the State of Texas.

"7. Because it appears from the face of the bill that section 5 of the act of the State of Texas known as the railroad commission act and set forth in the bill, of which complainant complains as unconstitutional because depriving it of due process of law, is not obnoxious, as alleged, to the fourteenth amendment to the Constitution of the United States, but that the said section, taken in connection with other sections of the said railroad commission act, is a valid provision and constitutional.

"8. Because it appears from the face of the bill that section 5 of the railroad commission act, if obnoxious to the Constitution of the United States, does not affect the law as a whole, and said commission law is valid and constitutional though section 5 be declared unconstitutional and void, and the relief prayed for by complainant to enjoin the railroad commission of the State of Texas from ever hereafter making any rates or issuing or delivering any further tariffs, orders or circulars or the relief sought by complainant's bill enjoining all persons hereafter from claiming any right under said law cannot in equity be granted by this court.

"9. Because it appears that the commission law, as set forth in complainant's bill and upon the invalidity of which the whole of the relief asked by complainant is based, is a valid and constitutional law and the court has no jurisdiction in this case, because, the law being constitutional, no Federal question is involved nor does it appear that said cause arises under the Constitution or any law of the United States.

"10. Because it appears from the bill that the allegations of the unreasonableness of rates fixed by the State commission and of which it complains and seeks relief by injunction is based upon the operating expenses, the interest on the bonded indebtedness and the stock issue of the defendant railway, which complainant alleges the defend-

ant railway should be permitted to earn. That said allegation setting up said claim as a basis of the reasonableness of the rate is insufficient in equity upon which to grant the relief prayed for.

"11. That so much of the allegation of complainant's bill as sets up the invalidity of circular 34 issued by the Railroad Commission of the State of Texas, which is made a part of said bill, defendants say the same is insufficient, in that it does not show that the requirements contained in said circular are unreasonable regulations imposed on defendant company; nor does it interfere with interstate commerce, as alleged.

"12. That so much of the allegations in complainant's bill as seeks to attack the validity of the law creating the railroad commission and prescribing its powers because of combining judicial legislation and executive powers is insufficient in law or equity upon which to base the relief prayed for.

"13. The defendants, further demurring, say that this court has no jurisdiction, because it appears from the bill and the cross-bill and record generally that there is a fraudulent combination between complainant and the defendant railroad company to obtain jurisdiction in this court by creating a diversity of citizenship in order that the defendant company, which is a domestic corporation chartered under the laws of Texas, should be enabled to apply for affirmative relief by means of the cross-bill filed by it against these defendants.

"14. Defendants, further demurring, say that so much of said bill as sets up want of notice of the time and place of fixing of rates by the Railroad Commission of Texas is insufficient in law or equity, because it appears by the bill that a notice was given before fixing rates and that defendant railroad company did appear, both by the traffic agent and counsel, and discussed the rates prior to their being fixed by the commission; and, further demurring, defendants say that the want of notice complained of is under a law of the State of Texas and no Federal question arises giving this court jurisdiction to determine its sufficiency.

"15. Defendants, further demurring, say that so much of complainant's bill as sets up that the commission law of Texas is obnoxious to the XIV amendment in not providing due process of law or in depriving the defendant rail-

road company of the equal protection of the law is insufficient, in this, that said objections were not shown by any allegations in said bill to appear upon the face of the law complained of by said complainant and there exists no Federal question arising upon the face of said law by which this court can take jurisdiction.

"Wherefore, and for divers other errors and imperfections appearing in said bill of complaint, the defendants pray the judgment of the court whether they shall be compelled to make answer to such points of said bill as are herein specifically demurred to, and pray to be dismissed with their costs in this behalf expended."

Demurrer to Cross-bill and Amendment.

"These defendants, by way of protestation, not confessing or acknowledging all or any of the matters and things in the said cross-bill of said cross-complainant contained to be true in such manner and form as the same are therein set forth and alleged, demur to the said cross-bill, and for causes of demurrer show:

"That said cross-complainant hath not in and by said bill made or stated such a cause of action as doth or ought to entitle it to any such relief as is thereby sought and prayed for against these defendants. Wherefore these defendants pray judgment of this honorable court whether they shall be compelled to further answer, and pray to be dismissed with their costs.

"And for specific causes of demurrer to the sufficiency of the various allegations of said cross-bill defendants say:

"1. That it appears from the allegations of the original bill in this cause that the same cannot be maintained, and, said original bill falling, said cross-bill must fall with it. The cross-bill cannot be maintained without the main bill to support it.

"2. For further grounds of special demurrer to said cross-bill defendants adopt the special demurrers interposed by them in this cause to the original bill numbered from two to fifteen, inclusive.

"Wherefore, and for divers other errors and imperfections appearing in the said bill of complaint, defendants pray the judgment of the court whether they shall be compelled to

make answer to such parts of said cross-bill as are herein specifically demurred to, and pray to be dismissed with their costs in this behalf expended."

The bill was dismissed as to Receiver Campbell and the cause tried March 23, 1893. The demurrers were overruled and appellants declining to answer final decree was entered against them and the railroad company substantially as prayed for.

ARGUMENT.

In this argument the following propositions, which alone are insisted upon on this appeal, will be discussed in the order named: (1) That the suit is in effect against the State of Texas and inhibited by the XI amendment to the Constitution of the United States; (2) various preliminary and minor questions touching the law and the action of the commission complained of; (3) that the law creating the Railroad Commission of Texas, approved April 3, 1891, is valid and constitutional; (4) may the courts inquire into the reasonableness of rates established by the commission except in the manner prescribed by the act; and, if so, are the rates established by the Railroad Commission of Texas unreasonable and unjust, as alleged in the bills of complaint?

First.

This being a suit by a citizen of the State of New York against the attorney general and the railroad commission, it is in effect a suit against the State of Texas and inhibited by the eleventh amendment to the Constitution of the United States.

(1) It must now be accepted as settled law that a suit by a citizen against the attorney general of one of the States of the Union in his official capacity is prohibited by this amendment, if the law under which he purports to do the

act complained of is valid and constitutional. Assuming the validity of the commission law for present purposes, it follows that the proceedings and decree against the attorney general are void. This is true whether the law is valid in its entirety or with the exception of section 5, because in suits by the attorney general in the name of the State the justness of the rates may be inquired into.

In re Ayers, 123 U. S., 443.
Pennoyer *v.* McConnaughy, 140 U. S., 10.
In re Tyler, 149 U. S., 190–191.

As the injunction is sought against the attorney general solely for the purpose of arresting proceedings in the State courts in the name of the State alleged to be contemplated by him, the suit is expressly forbidden by statute. That the law under which he proposes to act may be invalid is not material.

Rev. Stats. U. S., sec. 720.
Rensselaer, etc., R. R. Co. *v.* R. R. Co., 18 Fed. R., 617.

It is not urged that the attorney general can take part in the establishment of rates or in any other manner is interfering with the property of the railroad company or contemplating any other act save the institution of suits in which the company may, under the theory of complainant, contest in the courts the reasonableness of the rates fixed by the commission. It is only in suits instituted by private parties that the law makes the rates conclusively reasonable until otherwise determined in a direct action. In every action authorized to be brought by the attorney general the defense that the rates are unreasonable may be interposed. Under such conditions the language of Mr. Justice Field in the case where it was attempted to enjoin the attorney general of Virginia from instituting suits in the name of that Commonwealth is particularly pertinent: "There is a wide difference between restraining officers of

the State from interfering in such cases with the property of the citizen and restraining them from prosecuting a suit in the name of the State in her own courts to collect an alleged claim. Her courts are at all times as open to her for the prosecution of her demands as they are open to her citizens for the prosecution of their claims."

In re Ayers, 123 U. S., 509.

McWhorter *v.* R. R. Co., 24 Fla., 417.

(2) Still assuming the validity of the law, the suit as to the railroad commission is in effect against the State and therefore prohibited. I am aware that in some cases (McWhorter *v.* R. R. Co., 24 Fla., 417; R. R. Co. *v.* Dey, 35 Fed. Rep., 870; R. R. Co. *v.* Becker, 35 Fed. Rep., 885; R. R. Co. *v.* Trammel, 53 Fed. Rep., 196) it is denied generally that suits against a railroad commission are suits against the State, but the application of principles announced in the best considered of them will sustain our contention. In the *Florida* case it is said "that the rule which forbids a suit against officers, because in effect a suit against the State, applies only where the interest of the State is *through some contract* or some property right of hers or where her interest is in a suit brought or threatened by her officers, in her own name, to enforce some alleged claim of hers." In the *Dey* case Judge Brewer said: "And in all the cases in which, where the State was not a party to the record, and yet the judgment of the Supreme Court was that it was a real party in interest, and therefore the Federal Court without jurisdiction, it will, I think, be found that some *contract of the State* was the foundation of the litigation, and that those suits, though nominally against State officers, were construed by that court as in fact suits to compel performance by the State of its contract or to prevent it from carrying into effect measures intended to work a repudiation." Here both the complainant and cross-complainant allege that the law passed the 7th day of February, 1854, "entered into and

formed a part of the charter contract between said railway company, the State of Texas, and the bondholders aforesaid," and this is in effect a suit to restrain the State of Texas, through the commission, from violating the alleged contract by establishing rates which will yield less revenue than that authorized by the act of 1854. It is also said in these opinions that to constitute suits against the State, when its officers are the nominal defendants, the State must have a pecuniary interest involved. Such is this case. The commission law provides penalties for its violation, directs in sections 19 and 21 thereof that the commission shall cause them to be recovered and that they shall be paid into the treasury of the State. The right to these penalties is a property right, they are debts and demands due the State by the companies, and to restrain the commission and the attorney general from recovering them is a denial of the right of the State to collect its debts and reduce its property to possession.

But the principle of these cases, it is submitted, is too narrow. They lay down the rule that suits, though against officers through whom alone it may perform its sovereign functions, are not against the State unless a contract with the State is involved in the litigation or unless the State has a property interest in the controversy. Such a construction is destructive of the larger purpose of the amendment. From its terms and history it is clear that this purpose was to protect the State against Federal judicial interference with its administrative affairs as well as with its mere property rights. It is thereby declared that the "judicial power shall not be construed to extend to *any* suit in law or equity" against a State by a citizen of another State. The character of the suit is immaterial (1 Kent. Com., 297). The inhibition attaches if by the decree the property rights of the State may be affected or if the State through its officers may be compelled to do or abstain from doing any act in its governmental capacity. It is inconceivable

that the people of the United States, at that period intensely watchful and jealous of the rights of the States, intended by this broad and comprehensive amendment to protect the States against judicial interference with their property and leave unprotected the vital, undelegated powers of government. By the Constitution, as originally adopted, the judicial power of the United States did not extend to controversies between a State and its own citizens; nor does it now. It only extended to controversies "between a State and citizens of another State." It is familiar history that when the Constitution was submitted to the States for ratification it met with serious and bitter opposition, and the apparent authority given citizens of other States to sue a State in the Federal courts was vehemently denounced. To quiet these fears Mr. Hamilton gave public assurance that the provision was not susceptible of that construction. "It is," he said, "inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent. This is the general sense, and the general practice of mankind; and the exemption, as one of the attributes of sovereignty, is now enjoyed by the government of every State in the Union. Unless, therefore, there is a surrender of this immunity in the plan of the Convention it will remain with the States and the danger intimated is merely ideal." In the Virginia Convention, answering the denunciations of Patrick Henry and George Mason, John Marshall said: "With respect to disputes between a State and the citizens of another State its jurisdiction has been decried with unusual vehemence. I hope that no gentleman will think that a State will be called at the bar of the Federal court. * * * It is not rational to suppose that the sovereign power should be dragged before a court. The intent is to enable States to recover claims of individuals residing in other States. I contend this construction is warranted by the words." The Convention of New York, composed of such men as Hamilton, Jay, Livingston and Clin-

ton, declared, it seems, "that nothing in the Constitution now under consideration contained is to be construed to authorize any suit to be brought against any State in any manner whatever." Accepting these assurances in good faith the Constitution was ratified and so thoroughly was the question considered settled that no amendment upon the subject was proposed. This Court, however, decided in 1793 that a State could be sued by a citizen of another State (Chisholm *v.* Georgia, 2 Dallas, 419) and Chief Justice Jay concurred in the decision, notwithstanding his previous contrary declaration through which, in part at least, the States were induced to adopt the Constitution.

This decision produced great concern among the States. Intense feeling was aroused, which led to the adoption of the 11th amendment. As the Constitution then stood suits against the State could not be maintained by their own citizens and consequently it was only necessary to deny the right to citizens of other States, as was done by the amendment. It is an indisputable truth of history that this amendment was dictated by considerations of State sovereignty and had for its purpose the restoration of State immunity from suit by individuals as it existed prior to the formation of the Union.

2 Hare's Amer. Const. Law, 1055.

1 Bryce, Amer. Com., 231.

"The adoption of the first 11 amendments to the Constitution so soon after the original instrument was accepted shows a prevailing sense of danger at that time from the Federal power. And it cannot be denied that such a jealousy continued to exist with many patriotic men until the breaking out of the late civil war."

Slaughter-house Cases, 16 Wall., 82.

Davidson *v.* New Orleans, 96 U. S., 101.

What, then, is this immunity from suit restored by the amendment? Is it limited to mere pecuniary and property rights or does it extend to those of administration and government? The exemption of the United States and the several States of the Union from being impleaded without their consent is as absolute as that of the Crown of England (Cohens *v.* Virginia, 6 Wheat., 411) and "*no* suit or action can be brought against the King even in civil matters, because no court can have jurisdiction over him."

1 Blackstone, Com., 241.

The foundation of the doctrine shows it to be applicable to governmental affairs. In *Nichols* v. *United States*, 7 Wall., 126, Mr. Justice Davis said: "Every government has an inherent right to protect itself against suits, and if, in the liberality of legislation, they are permitted, it is only on such terms and conditions as are prescribed by statute. The principle is fundamental, applies to every sovereign power, and, but for the protection which it affords, *the government would be unable to perform the various duties for which it was created.*" In Briggs *v.* Light Boats, 11 Allen (Mass.), 162–163, Mr. Justice Gray (now of this Court) thus stated the rule: "It is an elementary and familiar principle of English and American constitutional law that no direct suit can be brought against the sovereign in his own courts without his consent. In the older books this is often put upon the technical ground that, all judicial writs being in the name of the King as the fountain of justice, the King cannot by his own writ command himself. But the broader reason is that it would be inconsistent with the very idea of supreme executive power and *would endanger the performance of the public duties* of the sovereign to subject him to repeated suits as a matter of right, at the will of any citizen, and to submit to the judicial tribunals the control and disposition of his public property, *his instruments and means of carrying on the government* in war and peace

and the money in his Treasury." In the case of *Ayers* Mr. Justice Matthews said: "The very object and purpose of the 11th amendment were to prevent the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties. It was thought to be neither becoming nor convenient that the several States of the Union, invested with that large residuum of sovereignty which had not been delegated to the United States, should be summoned as defendants to answer the complaints of private persons, whether citizens of other States or aliens, or that the *course of their public policy and the administration of their public affairs* should be subject to and controlled by the mandates of judicial tribunals without their consent, and in favor of individual interests."

In re Ayers, 123 U. S., 505.

It thus appears that immunity from suit rests upon the broad ground that suability is incompatible with sovereignity; that but for the rule "the government would be unable to perform the various duties for which it was created:" that any other rule "would endanger the performance of the public duties" of the State and place under the control of the judiciary "the instruments and means of carrying on the government," and that without it "the course of their public policy and the administration of their public affairs" would be subject to and controlled by the mandates of judicial tribunals. The constitutional amendment adopted by the people of Texas in 1890 and under which the commission law was enacted contains this provision: "The legislature shall pass laws to regulate railroad freight and passenger tariffs, to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State, and enforce the same by adequate penalties; and to the further accomplishments of these objects and purposes may provide and establish all requisite

means and agencies invested with such powers as may be deemed adequate and advisable." No rates were fixed directly by the legislature, but authority to establish rates is vested in the commission. The commission is the agency and means adopted by the legislature to preform the duty enjoined by the Constitution. It is given a superintending authority over the railways of the State and in effect is directed to take care that the laws relating thereto are faithfully executed. It is required to establish rates, to enforce the same by having the penalties inflicted, to report violations of the law to the attorney general and request prosecutions, to investigate all complaints against railroad companies, and, generally, it may be said, the most important functions of government relating to the establishment and enforcement of rates are entrusted to it. The commission is the representative of the State and within the limits of the law its acts are the acts of the State. The same is true of other State officers in the various divisions of government, and the principle which would extend judicial power over one would finally encompass the whole, and in the end the entire administrative machinery of the State would pass under the control and domination of the judiciary. These proceedings, if sustained, will interfere with or prevent the State from exercising its undoubted power to regulate commerce, one of the most important functions and duties of government, through the agency of a commission, and it is idle to say that to enjoin the officers through whom alone it can perform these duties, or through whom it lawfully elects to perform them, does not enjoin the State. A construction which places its administrative agencies under the control of the judiciary of a distinct government degrades a State, and is utterly destructive of its independence in all the powers not delegated to the United States and which are reserved to it by the Constitution. Compared with the independent exercise of that "large residuum of sovereignty" remaining in the States, mere property rights are of small

consequence, and to narrow the amendment to these would not accomplish the aims and aspirations of its authors or reflect the spirit of their time. They would have repelled the suggestion that their conception and purpose were limited to the lesser consideration of property and took no heed of the autonomy of the States. Their plan contemplated and embraced all of these. What would have been the answer then and what should it be now to the proposition that States may not be sued on contracts or for property, but may be enjoined from exercising the powers and duties of government? What would it avail the States to save their property and lose their independence? Let me not be misunderstood. It is conceded that if the law is void the suit as against the commission is not, under the decisions, against the State. The contention is that the law is constitutional, that the commission in effect and in respect of the powers and duties conferred and enjoined by it is *the State*, and a suit against it which interferes with the performance of these duties or which wholly restrains such performance is against the State. Any other conclusion, it is submitted, is illogical and indefensible. It is attested by the pronounced theory of this case. The very basis and foundation of the suit, the corner-stone of the complaint, is that the *State*, through the commission, is depriving the trustee of property without due process of law, in violation of the 14th amendment, for this amendment in declaring "nor shall any State deprive any person of life, liberty or property without due process of law" is levelled only against State action, and is not infringed unless the State is the actor. An injunction against the commission under that amendment is necessarily against the State, because if the commission does not act for the State the amendment is not violated. "To secure the manifest purposes of the constitutional exemption guaranteed by the 11th amendment requires that it should be interpreted, not literally and too narrowly, but fairly, and with such

breadth and largeness as effectually to accomplish the substance of its purpose. In this spirit it must be held to cover, not only suits brought against a State by name, but those also against its officers, agents, and representatives, where the State, though not named as such, is, nevertheless, the only real party against which alone in fact the relief is asked, and against which the judgment or decree effectively operates."

In re Ayers, 123 U. S., pp. 505–506.

Second.

Various preliminary and minor questions touching the law and the action of the commission, complained of, are without merit.

(1) The law does not deny the right of trial by jury, but if such were the case it would not render it objectionable. Trial by jury is not essential to due process of law.

Walker *v.* Sauvinet, 92 U. S., 90;
Kennard *v.* Louisiana, 92 U. S., 480;
Hurtado *v.* California, 110 U. S., 533;
State *v.* Wheisner, 35 Kansas, 275;
Janes *v.* Reynolds, 2 Texas, 252;
Reagh *v.* Spann, 3 Stew. (Ala.), 108.

(2) The penalties denounced by the statute are not immoderate or excessive.

O'Neil *v.* Vermont, 58 Vt., 140;
R. R. Co. *v.* Dey, 82 Iowa, 341;
O'Neil *v.* Vermont, 144 U. S., 331;
R. R. Co. *v.* Dey, 35 Fed. Rep., 877.

(3) The authority conferred upon the commission does not, as alleged in the bill, combine judicial, legislative and executive powers. The commission has no executive powers. The blending of administrative and judicial powers is

authorized by the constitution of Texas. Article II of that instrument provides: "The powers of the government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are legislative to one, those which are executive to another, and those which are judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, *except in the instances herein expressly permitted.*" By the amendment to the constitution adopted November 5th, 1890, heretofore quoted in full, the legislature is authorized to "provide and establish all requisite means and agencies *invested with such powers as may be deemed adequate and advisible.*" The original judiciary article of the State constitution of 1876 provided that "the judicial power of this State shall be vested in one supreme court, in a court of appeals, in district courts, in county courts, in commissioners' courts, in courts of justices of the peace, *and in such other courts as may be established by law.*" This provision, as amended in 1891, reads as follows: "The judicial power of this State shall be vested in one supreme court, in courts of civil appeals, in a court of criminal appeals, in district courts, in county courts, in commissioners' courts, in courts of justices of the peace, *and in such other courts as may be provided by law.*" Construing the commission law of that State, the supreme court of North Carolina said: "Neither is there any force in the argument that the legislature cannot confer judicial powers upon the commission, as the Constitution (art. 4, sect. 2) expressly authorizes the establishment of such courts inferior to the Supreme Court as the legislature may deem proper; and it is to be observed that the commission has been 'created and constituted a court of record' with all the 'powers and jurisdiction of a court of general jurisdiction as to all subjects embraced in the act creating' the same. Acts 1891, C. 498. Whether a court having no power to enforce its judg-

ments fulfills the definition of a court of record and of general jurisdiction is unnecessary to be considered. It is sufficient to say that the legislature has the authority to establish courts inferior to the Supreme Court and to 'allot and distribute its jurisdiction' as it may deem proper."

Atlantic Ex. Co. *v.* R. R. Co., 111 N. C., 463.

The amendment to the Constitution authorizes the legislature to establish a commission and invest it "*with such powers as may be deemed adequate and advisable.*"

In ordinary cases the act would not be obnoxious to the objection urged, but with this express constitutional authority all doubt is removed. The general rule on the subject is that "to some extent and for certain purposes the powers appropriate in their nature to one department are exercised by each of the others; sometimes by express direction of the supreme law, but otherwise only when it is done incidentally or as a means of exercising its own proper power."

Suth. Stat. Constr., p. 4.

R. R. *v.* Dey, 35 Fed. Rep., 874.

(4) It is alleged that the establishment of rates by the commission between points within the State affects interstate rates and reduces the revenues derivable therefrom, and it seems to be contended that to such extent it is a regulation of commerce between the States and therefore void. By section 22*a* of the act its provisions are expressly limited to the "transportation of passengers, freight and cars between points within this State," and the rates fixed are also thus limited. In the United States all commerce is subject to regulation, interstate commerce by Congress and internal commerce by the States. Within their respective jurisdictions the two governments are supreme.

Stone *v.* Trust Co., 116 U. S., 334;

Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S., 215;

Ratterman *v.* R. R. Co., 127 U. S., 411;

Bridge Co. *v.* R. R. Co., 37 Fed. Rep., 613.

There is certainly no authority under the law, and no effort on the part of the commission, to regulate interstate commerce. Traffic arrangements and competitive conditions cannot take from the State its right to regulate domestic commerce.

R. R. Co. *v.* Dey, 38 Fed. Rep., 663;
Commissioners *v.* Symms Grocer Co. (supreme court of Kansas, January, 1894), MS.

If such regulation "can be said to affect interstate commerce in any way it is incidentally and so remotely as not to amount to a regulation of such commerce."

Ficklen *v.* Shelby Co., 145 U. S., 24;
R. R. Co. *v.* Pennsylvania, 145 U. S., 192;
R. R. Co. *v.* Tenn., 19 Fed. Rep., 699.

(5) It is charged in the bill that the establishment of the rates by the commission and the promulgation of circular 34 are in effect a "confiscation and appropriation to the use of others," and a taking of the property of the trustee without due process of law and without compensation, contrary to sections 17 and 19, article I, of the Constitution of Texas. Section 19 has no application to the case of the trustee. It is expressly confined to citizens of this State. Section 17 denounces a taking for "public use." A regulation of commerce, by which the revenue derived from the use of property clothed with a public trust is reduced, is not a taking of property for public use within the meaning of this provision. To constitute such taking the property must pass into the direct control of the public or of public agencies and be subject to the indiscriminate use of all who may have occasion to use it.

Varner *v.* Martin, 21 W. Va., 534;
Memphis Freight Co. *v.* Memphis, 4 Cold., 419;
Jenal *v.* Draining Co., 12 Neb., 163;
Sholl *v.* Coal Co., 118 Ill., 427;
Matter of Eureka Basin, &c., Co., 96 N. Y., 42;
Gilmer *v.* Lime Point, 18 Cal., 229.

(6) The trustee insists that sections 1 and 15 of an act of the legislature of Texas alleged to have been passed February 7, 1854, constitutes a contract between the railroad company, the State and the bondholders. These sections are as follows:

"SEC. 1. Be it enacted, etc., That all railroad companies which have been heretofore incorporated, or which shall hereafter be incorporated or relieved from the performance of any act required of them, or which shall accept of any donation or loan from this State, or which shall accept of the subscription of any county of this State, shall have all the powers and privileges, and be subject to all the duties, liabilities and provisions contained in this act.

"SEC. 15. It shall be lawful for the legislature at any time to prescribe the rates to be charged for the transportation of persons and property upon any such road should they be deemed too high, and may exercise the same power every ten years; provided, that no reduction shall be made unless the net profits of the company for the previous ten years, the expenditures of the company being *bona fide*, and not with a view to defeat the operation of this section, shall amount to a sum equal to 12 per centum per annum upon its capital stock, and then so as not to reduce the future probable profits below the said per centum."

As a matter of fact, of which this Court should take judicial notice, no such law was passed in 1854.

General Laws Texas 1853, pp. 55, 58.

The act as alleged, however, if it be conceded to form a part of a contract between the railroad company and the State, cannot be held to be irrepealable.

R. R. Co. *v.* Miller, 132 U. S., 75.

R. R. Co. *v.* Minnesota, 134 U. S., 454.

It formed no part of a contract between the bondholders and the State. The bondholders were not parties to the charter. The basis of rates provided for by the act is the capital stock, in which the bondholders have no interest as

such and upon which they have no lien. That the railroad company may be a party to the contract, under the theory of appellees, is of no consequence in this action, since the cross-bill must abide the fate of the original bill.

Dows *v.* Chicago, 11 Wall., 112;
Cross *v.* Devalle, 1 Wall., 5;
R. R. Co. *v.* R. R. Co., 6 Wall., 742;
Bound *v.* R. R., 47 Fed. Rep., 33;
Dill *v.* Shahan, 25 Ala., 634;
Wetmore *v.* Fiske, 5 Atl. Rep., 375.

The bonds held by the trustee were issued June 15, 1881, and it is admitted the act was repealed in 1879. If not already obsolete it was also repealed by section 2 of article X of the constitution of Texas of 1876, in which it was provided, until changed by the amendment of 1890, that the legislature "shall from time to time pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on said railroads," because the basis of rates was changed by the constitution. Before courts should hold that the legislature of a State has surrendered its authority to regulate commerce from time to time as public interests may dictate, the company invoking such decision should exhibit its charter, and failing in this the presumption usually indulged against such abdication of authority should prevail. The importance of this is apparent from the history of this company. Some of the matters stated, it is true, the courts are not required to take judicial knowledge of, but the importance of the question is such that they may be used in argument. This company, now known as the International and Great Northern Railroad Company, is one formed by the consolidation of the International Railroad Company with the Houston and Great Northern Railroad Company.

I. & G. N. R. R. Co. *v.* Anderson Co., 59 Tex., 657.

The International Railroad Company was incorporated by an act passed August 5, 1870, the 16th section of which is as follows: "The State expressly reserves the right to regulate the rates of freight and passage upon said railroad, making no distinction between said railroad and any other in said State. Until the same are changed the rates of charges for freight and passengers shall be governed by the laws at present in force. And said company shall be and are hereby required at all times to transport all classes of people upon said railroad upon equal terms and charges, without any distinction whatever."

The Houston and Great Northern Railroad Company was incorporated by an act passed October 22, 1866, section 10 of which is as follows: "The said company, in its charges for freight and passengers, shall be governed by the general railroad law; it shall have the right to cross all public highways that it may be necessary to cross to establish said railway, and if said road shall cross any stream that is navigable it shall cross in such manner as not to impede navigation."

The act approved March 10, 1875, authorizing the consolidation, contains no provision in reference to rates. The present company must rest its case upon the original charters, for the act of consolidation makes no reference to the act of 1866 and only purports to change that of 1870 in particulars not pertinent here.

Tomlinson *v.* Branch, 15 Wall., 460.

Beach on Railways, secs. 553, 556, 557.

The charter of the International Company unquestionably authorizes the legislature to establish rates without limitation, and that of the Houston and Great Northern Company does so in effect. By neither of them is the legislature limited in the establishment of rates as in the act of 1853. The railway company is unquestionably bound by the provisions of the constitution authorizing the establish-

ment of rates, subject only to the limitation that they shall be reasonable. It has accepted the benefits of numerous general laws applicable to railways, and the constitution provides (article X, sect. 8) that "no railroad corporation in existence at the time of the adoption of this constitution shall have the benefit of any future legislation except on condition of complete acceptance of all the provisions of the constitution applicable to railroads."

(7) The validity of circular 34 is attacked upon the ground that with reference to hauling loaded cars of other companies it is a taking of property without consent, without compensation, without due process of law, and is a regulation of interstate commerce. This circular, quoted in full in the statement of the case, prescribes in substance (*a*) that when any company may wish to have a loaded car hauled to a point on a connecting line or over connecting lines to any point thereon, or when any other party may wish to have a loaded car hauled over a railroad to a point over its line or to a point on a connecting line, such loaded car shall be tendered to the company to receive it at a station on its line and on its track if such receiving company desire and demand; (*b*) that when tendered it shall be received and transported; (*c*) that the rate of transportation on loaded cars so tendered shall be on the commodity contained in them without regard to the ownership of the cars, and the rates shall be the same as are in use for like commodities when hauled in the cars belonging to the roads over which they are hauled; (*d*) that the circular shall only apply to loaded cars which have arrived at the point of original destination and which it may become necessary or desirable to reship to another destination in this State without unloading and to such as may be loaded at the point where tendered for shipment, and (*e*) that where through bills of lading are not given loaded cars are to be delivered to connecting

lines without unloading if so requested and shall be hauled to the point of destination and returned for the established rate for the use of such cars one way. It will be observed that the circular does not apply to all shipments over two or more lines, as charged in the bill, but only to those which have reached the point of original destination and to such as may be loaded at the point of tender; nor does it require the receiving company to do any switching to get such cars on its track, likewise charged in the bill, but the delivering company, if demanded, is required to deliver the cars at a station on its line and on the track of the receiving company.

Since February 7, 1853, railroad companies in this State have been required by statute to receive and transport without delay or discrimination all passengers and freight coming to them from connecting lines.

General Laws 1853, p. 58.
General Laws 1866, p. 84.
2 Pas. Dig., art. 7352.
Rev. Stats. Texas, art. 4251.

In order to perfect and enforce this requirement the commission is authorized to make the regulations contained in the circular, as will be seen from sections 3*j* and 15*b* of the commission law, not attacked in the bill, as follows:

"(*j*) The commission shall make reasonable and just rates of charges for each railroad subject hereto for the use or transportation of loaded or empty cars on its road; and may establish for each railroad or for all railroads alike reasonable rates for the storing and handling of freight and for the use of cars not unloaded after forty-eight hours' notice to the consignee, not to include Sundays."

"(*b*) Every railroad company which shall fail or refuse, under such regulations as may be prescribed by the commission, to receive and transport without delay or discrimination the passengers, tonnage, and cars, loaded or empty, of any connecting line of railroad, and every railroad which shall, under such regulations as may be pre-

scribed by the commission, fail and refuse to transport and deliver without delay or discrimination any passengers, tonnage, or cars, loaded or empty, destined to any point on or over the line of any connecting line of railroad, shall be deemed guilty of unjust discrimination: *Provided*, perishable freights of all kinds and live stock shall have precedence of shipment."

The purpose of the law and the circular is manifest. They are founded upon the necessities of commerce. It is well known that it has long been the custom of all railroads to do what is prescribed in the circular and for the compensation there fixed.

The general practice of railroads has been to receive and transport loaded cars and return them for three-fourths of one cent per mile both ways (charging also the usual rates for the property in them), and the commission in prescribing the "established rate," as the compensation for hauling the cars, has simply adopted the custom of the companies.

R. R. Co. *v.* Dey, 82 Iowa, 333, 334;
R. R. Co. *v.* R. R. Co., 109 Ill., 135.

It is therefore submitted that the circular is not a regulation of interstate commerce, but by its terms is expressly confined to internal commerce, and if it affects interstate commerce at all does so only remotely and incidentally (Munn *v.* Illinois, 94 U. S., 135; Ficklen *v.* Shelby County, 145 U. S., 24); that while it is not alleged in the bill that the compensation for hauling cars of other companies is insufficient, such compensation under the circumstances is reasonable and just (Budd *v.* New York, 143 U. S., 530), and that the circular is a just and lawful exercise of the power to regulate commerce (R. R. Co. *v.* Becker, 32 Fed. Rep., 849.) On the subject of the transfer of cars by connecting lines the supreme court of Iowa say: "The course of business of railroad companies originating in the wants and demands

of commerce requires the cars of one company to be delivered to another for transportation. It is presumed that the rules relating to compensation for the cars transported are settled by agreement or under rules recognized and prevailing in the business of transportation by railroads. At all events, the law provides rules under which this matter of compensation may be settled. It is competent for the railroad commissioners, if it be necessary, to impose rules touching this matter, in order to aid the railroad companies to perform the duty imposed by the statute to provide for joint rates, or to require or enforce the performance of that duty. The fact that the transfer of cars from one company to another for the transportation of property over more than one railroad, without breaking bulk, has been practiced so long as to be recognized as of the course of business of which we will take judicial notice (Peoria & P. U. Ry. Co. *v.* Railroad, 109 Ill., 135), is a complete answer to the complaints made in the objection under consideration. Surely a course of business so long pursued and so extensively prevailing and demanded by the commerce of this country cannot, when recognized and required by statute, become so objectionable in principle, so oppressive in operation, as to require the statute to be declared unconstitutional. A railroad company as a common carrier is required to receive and transport freight offered to it for transportation. The reasons upon which this rule is founded impose upon it the obligation to haul cars of other companies brought to it for transportation over its own road (Peoria & P. U. Ry. Co. *v.* Railroad, 109 Ill., 135). As the course of business of the railroad companies and the rules of law require them to transport the cars of other companies, surely a statute prescribing and enforcing the duty thus imposed cannot be regarded as interfering with the constitutional guaranties for the protection of the rights and property of such companies. The statute under consideration provides that freight in car-load quantities may be transferred instead of going through to

destination without change of cars, the cost of unloading being paid to the company making it (Acts 23d Gen. Assem., ch. 17, sec. 2). This provision is intended to excuse the duty to transfer cars upon payment of costs of unloading and is enacted in the exercise of legislative authority to regulate the performance of duty by carriers and prescribe reasonable charges for the transportation of freight."

R. R. Co. *v.* Dey, 82 Iowa, 335, 336.

In a case involving this general question, decided by Mr. Justice Field on the circuit, it was held that in the absence of express law and proof of a controlling custom railroad companies are not required to receive and transport loaded cars. The reasoning of the opinion, however, unquestionably supports the converse proposition, and, among other things, it is said that when the "receiving company takes the freight in the foreign cars * * * it is the general practice for the receiving company to pay the usual mileage on the cars taken and used, and such practice is a reasonable one and should be enforced."

R. R. Co. *v.* R. R. Co., 51 Fed. Rep., 472.

(8) As it appears to be conceded that the statute provides for due *notice* to railroad companies and receivers, it should be sufficient answer to the allegations of the bill on this subject to say:

(*a*) The trustee out of possession is not authorized to control the rates; is not entitled to notice, and may not complain of the absence of notice to the receiver, or, especially, challenge the sufficiency thereof. The same is true of the railroad company.

(*b*) In this case the receiver alone was entitled to notice, due and sufficient, and he does not complain.

(*c*) The receiver was notified in the manner alleged, appeared before the commission and submitted information and data on the subject of rates, received the tariffs from

the commission and put them in operation. Jurisdiction thereby attached, if not by service of notice, certainly by appearance, and the attempt to have the receiver occupy the ambiguous attitude of appearing and not appearing will not avail to defeat it.

Brown on Jurisdiction, secs. 45, 47.

Tower *v.* Moore, 52 Mo., 120.

Jurisdiction having attached, errors committed by the commission at the hearing, if any, relating to postponement, information requested by the receiver, failure to secure reasonable data upon which to establish rates, failure to have the witnesses sworn, and the like cannot be inquired into in this action. On this subject this Court, by Mr. Justice Harlan, said: "It is contended, however, that the act was so *administered* as to result in depriving the plaintiffs of their property without due process of law. This contention is material only so far as it involves the inquiry as to whether the tribunals charged by the statute with the execution of its provisions acquired jurisdiction to proceed in respect to the lots or lands in question and the owners thereof. Jurisdiction was, of course, essential before the plaintiffs' property could have been burdened with this assessment, but errors in the mere administration of the statute not involving jurisdiction of the subject and of the parties could not justify this Court in its re-examination of the judgment of the State court upon writ of error to hold that the State had deprived or was about to deprive the plaintiffs of their property without due process of law."

Lent *v.* Tillson, 140 U. S., 331.

The proper construction of the law and the character of notice to be given will be discussed hereafter. It may be said now, however, that whether the notice given, dated June 20, 1891, was sufficient to authorize the commission to establish rates on all commodities and property it gave ample authority to fix rates on *cotton*, *grain*, *lumber*, and *salt*.

These were especially named and more than ten days' notice given. The communications of July 29, 30, and 31, relating to grain, lumber, and cotton, were not intended as notices under the statute. Notice had already been given, and these were simply measures of precaution taken by the commission to guard against injustice.

Third.

The act of the legislature of the State of Texas, approved April 3, 1891, creating the railroad commission and defining its powers and duties, is valid and constitutional.

The principal objection urged to the law is that, by section 5, in suits between private parties and railway companies, under the act, the rates established by the railroad commission are made conclusively reasonable until otherwise determined in a direct action authorized by section 6, the contention being that in the establishment of freight and passenger charges on railways by a commission due process of law contemplates regular proceedings in courts of justice, and as the commission is not a court the section is void. It is further insisted that the supposed vice in this section pervades the entire act and no part of it is valid or enforceable. Both of these contentions were sustained by the circuit judge. The part of the act directly applicable to the question is contained in sections 4, 5, 6, 7, and 19, which are as follows:

"SEC. 4. Before any rates shall be established under this act, the commission shall give the railroad company to be affected thereby ten days' notice of the time and place when and where the rates shall be fixed; and said railroad company shall be entitled to be heard at such time and place, to the end that justice may be done; and it shall have process to enforce the attendance of its witnesses. All process herein provided for shall be served as in civil cases.

"(*a*) The commission shall have power to adopt rules to govern its proceedings, and to regulate the mode and man-

ner of all investigations and hearings of railroad companies and other parties before it, in the establishment of rates, orders, charges, and other acts required of it under this law: *Provided*, no person desiring to be present at any such investigations by said commission shall be denied admission.

"(*b*) The chairman and each of the commissioners, for the purposes mentioned in this act, shall have power to administer all oaths, certify to all official acts, and to compel the attendance of witnesses and the production of papers, waybills, books, accounts, documents, and testimony, and to punish for contempt as fully as is provided by law for the district or county court.

"SEC. 5. In all actions between private parties and railway companies brought under this law, the rates, charges, orders, rules, regulations, and classifications prescribed by said commission before the institution of such action shall be held conclusive, and deemed and accepted to be reasonable, fair, and just, and in such respect shall not be controverted therein until finally found otherwise in a direct action brought for that purpose in the manner prescribed by sections 6 and 7 hereof.

"SEC. 6. If any railroad company or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act, or regulation adopted by the commission, such dissatisfied company or party may file a petition setting forth the particular cause or causes of objection to such decision, act, rate, rule, charge, classification, or order, or to either or all of them, in a court of competent jurisdiction in Travis county, Texas, against said commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil causes in said court. Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court at either of its terms, and said action so appealed shall have precedence in said appellate court of all causes of a different character therein pending: *Provided*, that if the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days' notice.

"SEC. 7. In all trials under the foregoing section the burden

of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts, or charges complained of are unreasonable and unjust to it or them.

"SEC. 19. All of the penalties herein provided, except as provided in section 17, shall be recovered and suits thereon shall be brought in the name of the State of Texas in the proper court having jurisdiction thereof in Travis county, or in any county to or through which such railroad may run, by the attorney general or under his direction; and the attorney bringing such suit shall receive a fee of $50 for each penalty recovered and collected by him, and 10 per cent. of the amount collected, to be paid by the State. In all suits arising under this act the rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the State under this act shall be paid into the treasury of the State."

Appellants contend that these sections, with others of the act, provide due process of law, but that if section 5 be held inoperative the remainder of the act can stand.

(1) If it be conceded that the commission is not a "court of justice," that proceedings before it are not "after the manner of such courts," and that a hearing by it is not an "investigation by judicial machinery," the statute is nevertheless constitutional, because none of these are essential to due process of law. This has been the accepted doctrine of this Court for nearly half a century, and it has been announced in a variety of cases. It is the settled rule in cases of taxation, assessment, and eminent domain, heretofore the most prolific sources of controversy under the 14th amendment, and was followed in the only case involving the regulation of railway charges in which the question was directly presented. In Murray's Lessee *v.* Hoboken Land Company, 18 How., 280, this Court said: "Tested by the common and statute law of England prior to the emigration of our ancestors, and by the laws of many of the States at the time

of the adoption of this amendment, the proceedings authorized by the act of 1820 cannot be denied to be due process of law, when applied to the ascertainment and recovery of balances due to the Government from a collector of customs, unless there exists in the Constitution some other provision which restrains Congress from authorizing such proceedings, for though 'due process of law' generally implies and includes *actor, reus, judex*, regular allegations, opportunity to answer, and a trial according to some settled course of judicial proceedings (2 Inst., 47, 50; Hoke *v.* Henderson, 4 Dev. N. C. Rep., 15; Taylor *v.* Porter, 4 Hill, 146; Van Zandt *v.* Waddell, 2 Yerger, 260; State Bank *v.* Cooper, *ibid.*, 599; Jones' Heirs *v.* Perry, 10 *ibid.*, 59; Greene *v.* Briggs, 1 Curtis, 311), *yet this is not universally true.*" In McMillan *v.* Anderson, 95 U. S., 41, Mr. Justice Miller said: "But that does not mean nor does the phrase 'due process of law' mean by a judicial proceeding." The same justice in Davidson *v.* New Orleans, 96 U. S., 102, again stated the rule: "A most exhaustive judicial inquiry into the meaning of the words 'due process of law,' as found in the 5th amendment, resulted in the unanimous decision of this Court that they do not necessarily imply a regular proceeding in a court of justice or after the manner of such courts."

"Murray's Lessee *v.* Hoboken Land Co., 18 How., 272."

Reviewing the findings of a non-judicial tribunal and citing with approval some of the foregoing cases, this Court said quite recently: "It is settled that if provision is made for notice to and hearing of each proprietor at some stage of the proceedings upon the question what proportion of the tax shall be assessed upon his land, there is no taking of his property without due process of law."

Paulsen *v.* Portland, 149 U. S., 41.

It was held by Mr. Justice Field on the circuit that where life and liberty are involved there must be a regular course

of judicial proceedings as well as where title or possession of property is in contention; but that in the taking of property by taxation, which involves the same principle we are considering, the proceeding is more summary and stringent. This is but stating differently the rule that due process of law does not necessarily imply proceedings in a court of justice.

Railroad Tax Cases, 13 Fed. Rep., 751.

In his dissenting opinion in the *Minnesota* case (134 U. S., 464), the controlling principle of which has been finally accepted by this Court (Budd *v.* New York, 143 U. S., 517), Mr. Justice Bradley said: "No one questions the constitutionality or propriety of boards for assessing property for taxation or for the improvement of streets, sewers, and the like, or of commissions to establish county-seats, and for doing many other things appertaining to the administrative management of public affairs. Due process of law does not always require a court. It merely requires such tribunals and proceedings as are proper to the subject in hand."

The doctrine announced in the cases cited is also the general American doctrine.

Cooley, Const. Lim. (6th ed.), 432, 433; 6th Am. and Eng. En. Law, 43 *et seq.*

The rule is thus stated by the supreme court of Vermont:

"Due process of law is not necessarily process according to the course of the common law, but process according to the course of proceeding applicable to the subject-matter and conformable to those general rules which affect all persons alike. Judge Cooley says due process of law in each particular case means such an exertion of the powers of government as the settled maxims of law permit and sanction and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs."

Bartlett *v.* Wilson, 59 Vt., 35.

The supreme court of Maine said:

"But it has been expressly decided that due process of law does not always mean judicial process," citing the cases from this Court above referred to.

Eames *v.* Savage, 77 Me., 221, 222.

Judge Cooley, delivering the opinion of the supreme court of Michigan, says:

"There is nothing in these words, however, that necessarily implies that due process of law must be judicial process. Much of the process by means of which the Government is carried on and the order of society maintained is purely executive or administrative. Temporary deprivation of liberty or property must often take place through the action of ministerial or executive officers or functionaries or even of private parties where it has never been supposed that the common law would afford redress. * * * *A day in court is a matter of right in judicial proceedings, but administrative proceedings rest upon different principles.* The party affected by them may always test their validity by a suit instituted for the purpose, and this is supposed to give him ample protection. To require that the action of the Government, in every instance where it touches the right of the individual citizen, shall be preceded by a judicial order or sentence after a hearing would be to give to the judiciary the supremacy in the State and seriously impair and impede the efficiency of executive action."

Weimer *v.* Bunbury, 30 Mich., 211, 215.

Citing and approving the cases from this Court in which the rule was announced, the court of appeals of New York said:

"Due process of law in the 14th amendment to the United States Constitution does not mean by a judicial proceeding."

Matter of Ryers *et al.*, 72 N. Y., 10.

The same court, in reviewing cases from that State on the subject, said in a later case: "Denio, J., said in People *v.* Smith, 21 N. Y., 598: 'In imposing a tax or in appropriating the property of a citizen or a class of citizens for a

public purpose with a proper provision for compensation the legislative act is itself due process of law. * * * It is not necessary for the legislature in the exercise of the right of eminent domain, either directly or indirectly, through public officers or agents, to invest the proceedings with the forms or substance of judicial process.'"

Matter of Railroad Co. of Brooklyn, 112 N. Y., 74.

In the case of Mayor of Baltimore *v.* Scharff *et al.*, 54 Md., 517, it is said: "The Constitution of the United States provides that no State shall deprive any person of life, liberty, or property without due process of law. What is due process of law has been the subject of much very able discussion and of many decisions, but an exact definition has never been given which will include all cases to which it applies. The full meaning of such an important phrase remains to be ascertained by the gradual process of 'exclusion' and 'inclusion' in judicial determination as the cases may arise. (Davidson *v.* New Orleans, 6 Otto, 104.) Judge Cooley in his work on Constitutional Limitations, 356, after saying that due process of law is not confined to a judicial proceeding, says that 'In each particular case it means such an exertion of the powers of government as the settled maxims of the law sanction and under such safeguards for the protection of individual rights as those maxims prescribe for this class of cases to which the ones in question belong.'"

In a very recent case the same court said:

"Now, what constitutes due process of law has been the subject of a good deal of consideration, not only by the courts of this and other States, but by the Supreme Court of the United States also, especially since the adoption of the fourteenth amendment; and, after all that has been said and written, it may not be easy to define it so as to embrace every case. Generally speaking, however, due process of law may be said to mean a course or mode of proceeding according 'to the well-settled maxims of law and under such safeguards for the protection of individual rights as such

maxims prescribe for the class of cases to which the one under discussion belongs.' All agree that it does not 'necessarily imply a regular proceeding in a court of justice or after the manner of such courts.'"

Railroad Co. *v.* Baltzell, 75 Md., 99.

As applied to freight charges, the question was discussed and determined in a late case in Iowa:

"It is urged by the plaintiff's counsel that the statute is in conflict with the fourteenth amendment of the Constitution of the United States, 'in that, without due process of law and without just compensation, it takes away from the corporators funds invested by them upon certain specified trusts and applies these funds to uses to which the owners never consented.' We understand this objection in effect to be this: That by the statute the plaintiff or its stockholders are deprived of property without due process of law. The power of the State is exercised through designated officers—the railroad commissioners—by proceedings specially provided to enforce the authority of the State. They are designated by the code special proceedings, in which rights may be established and remedies enforced, and are pursued in many case (Code, sec. 2504). Railroad corporations acquire lands to be occupied by their roads by special proceedings. Surely the same character of proceedings may be invoked to enforce the performance by them of lawfully imposed duty. The proceedings provide for notice to the railroad companies and that they shall be heard in regard to the questions of joint rates (Acts 23d Gen. Assem., ch. 17, sec. 4). *It is a mistake to suppose the 'due process of law' is found only in law or chancery actions. Special proceedings, applicable to specified subject-matter and conformable to the rules requiring notice and the acquisition of jurisdiction, and which affect all persons alike whose property or rights come within the lawful scope of the proceedings, are prosecuted with 'due process of law'* (6 Amer. and Eng. Ency. Law, tit. 'Due

process of law"). The statutes are designed to prevent railroad corporations from charging unreasonable rates for the transportation of property. Surely it cannot be claimed that they are deprived of property and property rights by restrictions against unreasonable charges."

R. R. Co. *v.* Dey, 82 Iowa, 339, 340.

It will no doubt be insisted, in answer to these cases, that the contrary rule was laid down by the majority opinion in Railroad Company *v.* Minnesota, 134 U. S., 418. While there are expressions which apparently justify this claim, it is in fact unfounded. The true construction of the opinion is that in the absence of notice and a hearing before the commission, when it is attempted to enforce rates thus illegally established, the railroad company is entitled to a judicial investigation. Great stress was put and the case evidently turned upon the fact that "no hearing is provided for, no summons or notice to the company before the commission has found what it is to find and declared what it is to declare, no opportunity provided for the company to introduce witnesses before the commission—in fact, nothing which has the semblance of due process of law." It was the absence of notice and the right to be heard before the commission which impressed the statute with illegality, and the opinion is not susceptible of the construction that judicial proceedings are indispensable to the conclusiveness and finality of rates. At all events, in view of the serious division of opinion among the justices of this Court in that case and the subsequent declaration of principles believed to be inconsistent with such a holding (Budd *v.* New York, 143 U. S., 517), the question must be considered still open and debatable.

(2) Tested by the more general principle announced in some of these cases, the statute is constitutional. Recognizing the doctrine that judicial proceedings are not always necessary or proper where government takes property or regulates the use of it, Judge Cooley thus states

this rule: "When property is appropriated by the government to public uses or the legislature interferes to give direction to its title through remedial statutes, different considerations from those which regard the controversies between man and man must prevail, different proceedings are required, and we have only to see whether the interference can be justified by the established rules applicable to the special case. Due process of law in each particular case means such an exertion of the powers of government as the settled maxims of law permit and sanction and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs."

Cooley, Const. Lim. (6th ed.), 434.
Lewis, Em. Domain, sec. 365.
Davidson *v.* New Orleans, 96 U. S., 105, 107.
Hagar *v.* Reclamation District, 111 U. S., 708.
Stewart *v.* Palmer, 74 N. Y., 184.
People *v.* O'Brien, 111 N. Y., 1.

What character of process and tribunal are suitable and adapted to the end to be attained within the meaning of these decisions must be arrived at "by the gradual process of judicial inclusion and exclusion, as the cases presented for decision shall require, with the reasoning on which such decisions may be founded."

Davidson *v.* New Orleans, 96 U. S., 104.

The general rule is that the method pursued should be appropriate to the case, adapted to the end to be attained, just to the parties, with notice and an opportunity to be heard before an appropriate and impartial tribunal.

Cooley, Const. Lim. (6th ed.), 694, 695.
Mills, Em. Do., secs., 84, 85.
Lewis, Em. Do., sec., 313.
R. R. Co. *v.* Ferris, 26 Tex., 599.
Rhine *v.* McKinney, 53 Tex., 361.
Meyer *v.* Albany, 56 N. Y., 374.

Argument is unnecessary to show that railroad commissions are peculiarly appropriate tribunals to fix and establish rates. It is universally accepted American law.

Stone *v.* Trust Co., 116 U. S., 307.
R. R. Co. *v.* Minnesota, 134 U. S., 418.
R. R. Co. *v.* Wellman, 143 U. S., 339.
Tilly *v.* R. R. Co., 5 Fed. Rep., 656.
R. R. Co. *v.* Dey, 35 Fed. Rep., 873.
People *v.* Harper, 91 Ill., 366.
State *v.* R. R. Co., 38 Minn., 281.
R. R. Co. *v.* Smith, 70 Ga., 694.
Stone *v.* R. R. Co., 52 Miss., 607.
McWhorter *v.* R. R. Co., 24 Fla., 417.
R. R. Co. *v.* Dey, 82 Iowa, 312.
R. R. Co. *v.* Wellman, 83 Mich., 592.
State *v.* R. R. Co., 22 Neb., 313.
Atlantic Ex. Co. *v.* R. R. Co., 111 N. C., 463.

In all such cases, where not in conflict with the State constitution, the findings of the board of commissioners or other tribunal may be made final and conclusive.

Mills, Em. Do., sec. 322.
Lewis, Em. Do., secs. 520, 536.
2 Dill. Municipal Corp., sec. 619.
Ex parte Fook, 49 Cal., 402.
Rhoads *v.* Cushman, 45 Ind., 85.
Emory *v.* Bradford, 29 Cal., 85.
R. R. Co. *v.* Randolph, 24 Texas, 332.
Cooley on Taxation, 528, 529.
In re Fowler, 53 N. Y., 63.
Williams *v.* School District, 33 Vermont, 279.
R. R. Co. *v.* Ely, 95 N. C., 77.

This general rule finds abundant sanction in the decisions of this Court. In one of the later cases, which is the type of many, speaking of the action of the board of general ap-

praisers under the act of Congress of June 10, 1890, in ascertaining the dutiable value of imported articles for the purpose of fixing the tariff thereon, the finding of the board being made conclusive as to such value, Mr. Justice Jackson said: "It was certainly competent for Congress to create this board of general appraisers, called 'legislative referees' in an early case in this Court (Rankin *v.* Hoyt, 4 How., 327, 335), and not only invest them with authority to examine and decide upon the valuation of imported goods, when that question was properly submitted to them, but to declare that their decision shall be final and conclusive as to the dutiable value of such merchandise against all parties interested therein. * * * The importers in this case cannot be heard to complain of this additional duty or penalty which was a legal incident to the finding of a dutiable value in excess of the entry value to the extent provided by the statute. They had full notice of the proceedings before the board of general appraisers upon their appeal to said board, and ample opportunity to be heard on the question of the market value of the imported goods. It cannot, therefore, be properly said that they have been subjected to penalties without notice or an opportunity to be heard, or been deprived of their property without due process of law."

Passavant *v.* United States, 148 U. S., 219, 222.
Hilton *v.* Merritt, 110 U. S., 97.
Quinby *v.* Coulan, 104 U. S., 425.
In re Fassett, 142 U. S., 479.
Ting *v.* United States, 149 U. S., 714, 715.

If such boards may be created and their findings made conclusive with reference to the general public and ordinary property, what is it that exempts railroad companies and their property from the operation of the rule? Logically and upon principle, in what does the difference consist? It is well known that in many instances railroad companies secure their right of way by the award of non-

judicial boards whose conclusions are final. If the mere regulation of its use can be considered a taking or deprivation within the meaning of the Constitution, what powerful alchemy transforms the character of such property and makes it, owned by the general public, subject to such disposition, and, in the hands of the companies, governed by what they deem a more favorable rule? In the application of this principle to freight rates, Mr. Justice Bradley, in his unanswerable dissenting opinion, said: "It is complained that the decisions of the board are final and without appeal. So are the decisions of the courts in matters within their jurisdiction. There must be a final tribunal somewhere for deciding every question in the world. Injustice may take place in all tribunals. All human institutions are imperfect; courts as well as commissions and legislatures. Whatever tribunal has jurisdiction, its decisions are final and conclusive unless an appeal is given therefrom. The important question always is, what is the lawful tribunal for the particular case? In my judgment, in the present case the proper tribunal was the legislature or the board of commissioners which it created for the purpose."

R. R. Company *v.* Minnesota, 134 U. S., 465.

On this subject the editors of the leading law journal say: "There is no sense, legal or otherwise, in the proposition that because the question is a judicial question it can only be dealt with in one of the *ordinary* judicial courts, and cannot be dealt with judicially by a commission of experts established by the legislature. Questions purely judicial are constantly dealt with by special commissions established for the purpose, not only in England, but in this country. The so-called Parnell Commission furnishes a conspicuous illustration of this statement, so far as Great Britain is concerned; and the Electoral Commission furnishes antoher illustration of it, so far as this country is concerned; and special boards and tribunals are constantly created by the

States for the disposition of judicial questions where their constitutions empower their legislatures to do so. Such a commission lately sat in Georgia to dispose of certain rights growing out of the ownership by the State of Georgia of a railway within that State, and many other like instances could be cited. These commissions are none the less *courts* because they are specially created to deal with a special subject, provided that they are required to deal with it by judicial processes and methods. The argument, then, that this is a judicial question in such a sense that it can only, be dealt with in the ordinary judicial tribunals is mere nonsense, and nonsense of the kind that is not worth the pains that it takes to refute it."

26 American Law Review, p. 889.

That the action of the commission should be final is the matured judgment of those who, from a disinterested standpoint, have made a special study of the railroad problem. The third annual convention of railroad commissioners, held in Washington March 3 and 4, 1891, composed of the Interstate Commerce Commissioners and commissioners from Connecticut, Florida, Illinois, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Nebraska, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Vermont, Virginia, and Wisconsin, and presided over by Judge Cooley, by common consent the most eminent of living constitutional lawyers, adopted, with practical unanimity, the following resolution: "That it is within the power of Congress and the State legislatures to delegate the power of reasonable regulation of rates to boards of commissioners and to make their findings upon questions of fact and schedules of rates fixed by them, after fair legal opportunity to be heard, as conclusive and binding upon the courts as the findings of a master commissioner in chancery in United States courts, as the verdict of of a jury, or as the valuations of a tax-assessor in matters of

ad valorem assessments of property." The Interstate Commerce Commission in its fourth annual report to Congress recommended that the findings of fact by the commission be made final and conclusive. Probably in no country has the regulation of railways been given more careful and thorough study than in England. The several reports of the special parliamentary committees in 1872 and 1882, presided over by Lord Salisbury and the Earl of Derby, considered the subject exhaustively and led to the passage of the acts of Parliament of 1873 and 1888. Under the former of these laws the commission created by it had all the powers of a court of law to render judgment and enforce compliance therewith. Appeals from the decisions of the commission were limited to questions which were certified by the commission to be questions of law, and its findings of fact were absolute and conclusive. In his report to the Secretary of State, by request of the President, on the relations of the governments of western Europe to the railway systems, in 1887, Mr. Simon Sterne, of New York, general solicitor of the Missouri, Kansas and Texas Railway Company, thus speaks of the operation of this law: "This commission has produced most satisfactory results. Although not many cases came before that tribunal, as compared with the cases which are adjudicated in the ordinary courts of justice, the fact of its very existence and the promptness with which justice was administered prevented in themselves many abuses which theretofore existed, and a decision upon one case buried out of sight a whole class of discriminations or evils coming under the same category."

Senate Mis. Doc. No. 66, 2 sess., 49 Cong., p. 14.

In 1888 the entire subject was reconsidered and the proposition to abandon the commission was rejected. The committee said: "Your committee cannot see any reason for reversing the legislation of 1873 and returning to the purely legal tribunal which, as the court of common pleas, was

tried from 1854 to 1873 and then abandoned." The powers of the commission were extended by the act of 1888. It is expressly declared that the "commission shall be a court of record and have an official seal which shall be judicially noticed," that "no appeal shall lie from the commissioners upon questions of fact or upon any question regarding the *locus standi* of a complainant," and that "save as provided by this act an order or proceeding of the commissioners shall not be questioned or reviewed and shall not be restrained or removed by prohibition, injunction, certiorari, or otherwise, either at the instance of the Crown or otherwise."

The Law Reports, (Statutes) 1888.

But the law of Texas, the proper construction of which will now be considered, does not make the rates conclusive within the meaning of these decisions.

(3) While it may be that the railroad commission created by this act is not, strictly and technically speaking, a court, yet it is a special tribunal peculiarly adapted to discharge the duties devolved upon it and invested with legislative and judicial or, certainly, *quasi* judicial powers, which are to be exercised after the manner of the legislature and the courts. The commissioners are appointed by the governor, with the advice of the senate. Their qualifications are prescribed, and they receive the same salary as the governor and the judges of the supreme court of Texas. They are provided with every facility to make thorough investigations, including railway experts. They are required by the act to "fix to each class or subdivision of freight a *reasonable rate* for each railroad subject to this act," and their oath of office enjoins them to "faithfully and justly execute and enforce the provisions of this act." The commission is authorized to make all needful rules and regulations for its government and adopt such modes of procedure as may be

deemed necessary and proper. Before any rates can be established the railroad companies to be affected must be given ten days' notice of the time and place when and where the rates will be fixed. Ten days is the time fixed by statute in Texas in which citation must be served in civil cases. The notice provided for in this act serves the purpose of the writ, summons, or citation in law and the subpœna in chancery. The statute does not prescribe specifically the character of notice to be given, but it is plain that it contemplates informing the companies that at a certain time and place rates will be fixed on certain named classes of property or commodities, when the companies will be heard as to what rates should be established thereon. The act does not contemplate a complaint, general or specific, against the companies, nor is such desirable or appropriate in this character of proceeding, and the notice need not take the form of a declaration or petition, technically speaking. It should, however, be reasonably definite and should state particularly upon what classes of property or commodities rates will be established, so that the companies may be prepared at the hearing to present to the commission their views of what rates on the articles named would be reasonable. After service of notice or voluntary appearance the companies are entitled to be heard, to the "end that justice may be done," and they shall have process to enforce the attendance of their witnesses. Manifestly the hearing to which they are entitled is such as will afford them fair and reasonable opportunity to present to the commission all evidence and data bearing upon the question, subject to the right of the commission (as in a committee of the legislature or a court) to control, direct, and properly limit the general conduct of the investigation and the introduction of testimony and data. Under the act all process must be "served as in civil cases." Notice is process and should be served by a sheriff or constable delivering a copy to the proper officer of the companies or at their principal office, as required by statute. The chairman

and each of the commissioners are authorized to administer oaths, compel the attendance of witnesses, and to "punish for contempt as fully as is provided by law for the district or county court." The act unquestionably contemplates that all papers, way-bills, books, accounts, and documents presented to the commission at a hearing shall, unless waived, be legally authenticated and the testimony of witnesses given before it under oath. By section 9 the commission is empowered to hear complaints and find the amount of damages. By section 13 it is authorized in making investigations to issue subpœnas for witnesses and to enforce obedience thereto by fine and imprisonment for contempt "in the same manner that a judge of the district court might do under similar circumstances." While other portions of the act assimilate some of its proceedings to those of the legislature and legislative committees, these provisions establish incontestably that the hearing before the commission is "after the manner of the courts" and tantamount to a judicial investigation. When notice has been given and a hearing had, it is provided by section 5 that in actions between private parties and railway companies brought under the act the rates prescribed by the commission shall be held conclusive and deemed and accepted to be reasonable, and in such respect shall not be controverted in said suits until finally found otherwise in a direct action instituted for that purpose under sections 6 and 7. These sections provide that if any railroad company or other party at interest be dissatisfied with the decision of any rate they may bring a direct action against the commission in a court of competent jurisdiction at the seat of government to declare the rate unreasonable and unjust, and that the burden of proof shall rest upon the plaintiff. Full and ample provision is also made to hasten a final decision in such cause. The substance of these sections is that when established by the commission the rate becomes effective immediately or at such time as the commission may prescribe,

and in the suits named it is to be held conclusively reasonable until the direct litigation is ended. The law looks to a probable contest by railroad companies and shippers and puts them on the same footing. If the companies complain that the rate is too low they must accept it until set aside; if shippers complain that the rate is too high they must, nevertheless, pay it until reversed. As the roads must be operated and kept going, and as some authority must fix the rate to be charged pending the controversy, the law, as the presumption of the correctness of the finding and the necessities of the situation authorize, if not demand, accepts for the time being the rate established by the commission as reasonable and just. When the rate is determined in a direct action to be unreasonable and unjust the proper construction of the act and its undoubted purpose is that the judgment is complete protection to the companies in all such suits. These provisions have no application to suits in the name of the State (section 19), but in these the reasonableness of the rates may be inquired into pending a direct action. Thus understood and interpreted, upon grounds other than those heretofore urged, section 5 is a valid enactment. If it be considered merely as establishing a rule of evidence, under the circumstances it was the exercise of the acknowledged power of every legislature. The commission law of Georgia provides that the schedule of rates fixed by the commission shall be taken in all courts as *sufficient* evidence that the rates are just and reasonable. Mr. Justice Woods, when circuit judge, apparently assuming that this was intended as prohibiting an attack upon the rates absolutely and without recourse to any other tribunal, nevertheless sustained it as prescribing the effect of evidence.

Tilley *v.* R. R. Co., 5 Fed. Rep., 659.
In re Linn County, 15 Kans., 500.
People *v.* Turner, 117 N. Y., 227.
Ting *v.* United States, 149 U. S., 729.

So also it finds justification in the rule that the judgment or findings of courts and special tribunals upon matters within their jurisdiction cannot be attacked collaterally, although the jurisdiction in the case of boards of commissioners is not exercised in the form of judicial proceedings.

Ballard *v.* Thomas, 19 Gratt., 14–22.
Van Fleet, Coll. Att., secs. 801, 804.

The section we are considering prescribes in effect that the finding of the commission cannot be attacked in collateral proceedings between private parties and the railway companies, but that it may be questioned in a direct action against the commission. A statute of New Jersey relating to the assessment of benefits by the board of commissioners, which, after making provision for the effect of certain evidence based upon the action of the board, prescribes that "the proceedings upon which such deeds, declarations of sale, and conveyances are founded shall not be subject to be questioned collaterally, but may at any time be reviewed by *certiorari* or other proper proceeding in the supreme or circuit court," was enforced by the supreme court of that State.

State *v.* Mayor of Jersey City, 35 N. J. Law, 381.

It will be observed that the act not only provides for notice and hearing, but requires the commission to establish *reasonable rates*. If the act is carefully and faithfully followed the obligation of the State is fulfilled. That there may be or has been an erroneous decision as to rates cannot affect the validity of the law. Speaking by Chief Justice Waite, this Court said on the subject:

"At most this was an error of judgment in the court. The constitutional provision is 'nor shall any *State* deprive any person of life, liberty, or property without due process of law.' Certainly a State cannot be deemed guilty of a violation of its constitutional obligation simply because one of its courts while acting within its jurisdiction has made

an erroneous decision. The legislature of a State performs its whole duty under the Constitution in this particular when it *provides a law for the government of its courts which if followed will furnish the parties the necessary constitutional protection.*"

Arrowsmith *v.* Harmoning, 118 U. S., 195, 196.

Nor is the validity of the statute affected by the fact, if such be the case, that hardship or injustice may result from its operation.

Kelley *v.* Pittsburg, 104 U. S., 78.

This section of the act finds its strongest support on this branch of the case, however, as does the rule applicable to assessments, taxation, and eminent domain, in public necessity and in considerations affecting the general welfare. The railroads must be operated. Stagnation or inactivity would destroy them. They cannot be operated without the imposition of tolls and the collection of revenue. The public is entitled to service and the companies to remuneration. In this case the State has resumed its recognized authority to fix and establish the charges for transportation, and delay would work injustice somewhere. If the rates are too high shippers are injured; if too low the companies become the sufferers. The magnitude of the interests involved, the duty of the Government to control its highways, and the very nature of the business conducted render a prompt decision of the controversy as to rates necessary and imperative. It is idle to say that shippers should continue to pay exorbitant rates or the companies accept inadequate compensation until each complaint of unjust or insufficient charge is determined by the slow process of the courts. The necessities of the case demand a tribunal specially adapted to the work, with suitable and expeditious machinery. To require the companies to accept inadequate or shippers pay unreasonable rates and afterwards adjust their differences through the courts would seriously cripple the right of

regulation or prove the most fruitful source of unequal and vexatious litigation of our day. There should be some tribunal established to promptly decide controversies between the companies and the public as to rates, which, in their nature, will not admit of delay, for otherwise the grossest injustice may result, and both the companies and the public should be required to accept the decision and observe it, pending a review by judicial authority. That every interest may be protected it is necessary that the judgment become at once effective. In cases of eminent domain and the like this necessity is not so imperative, though it is commonly acted upon, because time is not so largely the essence of the transaction, but here the property is being used continuously and tolls continuously levied and exacted. Regulation which will afford adequate redress against unreasonable rates, either to the companies or to the public, must instantly arrest their operation, and, when so found by the commission after careful and impartial inquiry, it is not unjust that all parties for the time being abide a conclusion reached by due course of the law of the land.

Ex-Governor Larrabee, of Iowa, who tells us he has been shipper, railroad promoter, owner, stockholder, director, president, and manager, has published within the past few months an interesting work on "The Railroad Question." In discussing this phase of the problem he says, page 380 *et seq.*:

"But even if the competency of the courts to properly determine such questions were admitted, there would still exist one serious objection to their jurisdiction. Courts necessarily move slowly, while all differences arising between the public and the railways, and especially those concerning rates of transportation, require prompt and decisive action. There are no fixed conditions in commerce. It is a kaleidoscope constantly presenting new phases. Competition at home and abroad, tariff duties, the condition of the crops, and a thousand other influences affect it and may require a prompt readjustment of the tariff. So long as rail-

road companies are permitted to resort to injunctions and effect other delays rendered possible through the machinery of the courts, to prevent for years the enforcement of tariffs prescribed by administrative authorities, so long will the public be at their mercy. So long as they have nothing to lose and everything to gain by a judicial contest, it will be their policy to delay through the courts the enforcement of any tariff, whether prescribed by legislature or by an authorized commission, that falls below their standard. It is not to be understood that the acts of railroad commissioners should never be subject to a judicial view. If such boards clearly exceed their authority or are otherise guilty of maladministration, if they violate constitutional rights, then railroad companies, if injured by their acts, should be permitted to seek redress in the courts; but they should not be permitted to nullify an official tariff by legal maneuvers. It is clearly not within the province of the courts to make rates or to lay down rules to be followed by those to whom the law has delegated the power to make them, nor should the courts aid the railroads in an attempt to nullify an official tariff that has been legally promulgated. A tariff prepared by sworn and disinterested officials is more likely to be just than one prepared by interested railroad men, and railroad companies should be compelled to adopt it and continue it in use until it is amended or revoked by legal authority.

"Individual shippers are powerless as against strong corporations. Railroads apply to the courts for what they are pleased to term redress, and in the meantime refuse with impunity to accept an official tariff; but the shipper has no protection; he must pay their rates or go out of business. What reason can be assigned why the weaker should be discriminated against? A promulgation of a tariff prepared by a commission is equivalent to a declaration on the part of those officials that the rates or some of the rates charged by the railroads are unreasonably high. The railroad, in applying to the courts for protection, claims that the tariff prescribed by the commission is unreasonably low. Both tariffs are therefore impeached, one being that of an interested private company, the other that of a disinterested public board. It is evident that, even if the people should see fit to give the courts jurisdiction in such controversies, one of these tariffs must temporarily prevail pending the

decision of the court, and sound public policy and justice to the patrons of the road certainly require that the official tariff be recognized by the courts and made to be respected by the railroad company until it is proved to be unreasonable and is set aside by lawful authority.

"It is claimed by railroad men that they should be allowed to make their own tariffs, because rate-making is so intricate a subject that none but railroad experts can do it justice. If this were so the courts would be even less competent to review a schedule of rates than a State or national commission would be to make one. Courts cannot be expected to have expert knowledge in all matters that are likely to be brought before them. They must rely upon the testimony of expert witnesses whenever technical questions are involved in the determination of cases. The identical sources of information from which courts draw are accessible, or may be made accessible, to a commission, which has the additional advantage that its members may be selected with special reference to their fitness for the duties which they will be called upon to perform, and are expected to devote their whole time to the settlement of questions arising in the transportation business. Such a commission can practically be made a court with jurisdiction over all matters connected with railroad business. The railroad manager, no doubt, is thoroughly familiar with the wants and desires of his company; but it may be fairly presumed that he is less familiar with the needs of the public than a railroad commission whose members are in constant communication with the people, patiently listen to the complaints of shippers, court and receive suggestions as to needed changes in classification and rates, and study the relative advantages of the different sections and different interests of the State or the country as regards transportation. A railroad freight agent, on the contrary, is disposed to think that shippers ought to be satisfied with any rate lower than those charged fifty years ago for carting or other crude methods of transportation."

In cases of commanding necessity the decision of any impartial tribunal, selected and proceeding under the forms of law, may finally, much less temporarily, as under this act, determine the rights of parties. That inconvenience or

even injustice may follow springs from infirmities inherent in every tribunal and affords no ground of complaint. The Constitution itself contemplates that persons may actually be injured and deprived of property by due process of law.

The principle insisted upon not only rests upon considerations already urged, but also upon the rightful presumption that the finding of the commission is just and correct. This must have been the basis of the decree in this case. While there is a sharp controversy between the State and the companies respecting the reasonableness of rates, which the circuit judge decided favorably to the companies and from which the State has appealed, yet pending the appeal the decree is being enforced without bond or other security, and tolls claimed to be exorbitant are being laid daily upon the commerce of Texas upon no other authority than this appealable decree. It is necessary that the rates be not subject to collateral attack and that the reasonableness thereof be tested in one action in which the State and the companies are parties in order that the law may be effectually administered and protection afforded the public. It is no answer to this suggestion to say that the right of shippers to sue the companies for discrimination or extortion gives them ample defense. It is the duty of the State to enforce its laws, especially such as are designed to protect the public in so important a matter as the exaction of taxes or tolls; and if experience has conclusively demonstrated any proposition bearing upon the subject of transportation it is the utter futility of this right of action in shippers. In the report of the select committee of Parliament heretofore referred to, and which may be accepted as stating the matured English opinion, it is said "that the difficulties in the way of obtaining redress by private individuals against railway companies for overcharge or illegal preference are almost insuperable." The experience of this country is thus stated by Mr. John D. Kernan, chairman of the New York rail-

road commission, in his testimony before the Senate committee in 1885: "Why, then, have not the courts enjoined the continuance of the wrongs and enforced the payment of damages? Why, again, is it that substantially no such suits ever have been brought and that so few decisions in this country exist? It is not because of defects in the law or in the constitution of the courts, but it is because the subject is one which neither client nor lawyer, judge nor jury, can unravel or deal with intelligently within the compass of an ordinary trial and with such knowledge of the matter as men generally well educated possess. Let a man take the testimony in five volumes before the Hepburn committee; read one hundred pages of the clear and able statements of Mr. Blanchard, for instance; con over the facts and figures he gives, and then let him try to reach a conclusion upon the question under discussion. Some conception will thus be obtained of what a lawsuit is which involves the reasonableness of rates or the existence of an unjust discrimination or a local rate as compared with a through rate. As the onus is upon the complainant, add to his difficulties the fact that his adversary has nearly all the evidence in his possession, locked up in books and in the memory and intelligence of experts who have made the subject their study. *The expense involved, the uncertainty to be faced, and the difficulties to be overcome in an ordinary suit at law have made that remedy obsolete and useless.* It is time that carriers who design to discuss this question fairly admitted that shippers cannot enforce their claims for reasonable rates, and to be protected against unjust discrimination through the courts or under the common law any more than carriers can under the same common law and in the same courts prevent competitors from pursuing wrong and destructive policies. The establishment of over twenty commissions in different States is, in each case, a declaration of this conclusion, and an effort to substitute some practical and just remedy for the defect."

That the remedy of shippers to sue the railroad com-

panies is wholly inadequate protection is recognized by railway officials. In his testimony before the Senate committee, Mr. Albert Fink, commissioner of the trunk lines and chairman of the joint executive committee, said: "In many cases, where small amounts are involved which do not justify legal proceedings against the company, the aggrieved parties are prevented from prosecuting their claims. Now, if it is recognized, as I believe it generally is, that the difficulty lies in the administration of the law, the remedy is to improve that administration. The only remedy I can suggest looking to a prompt and efficient execution of the common law is the establishment of special courts, of which at least one judge should be an expert in the transportation business, to establish courts for the trial of land-transportation cases in the same manner as there are now courts for the trial of admiralty cases. The establishment of such courts would of course require some time; but if they are once established I am sure that in the course of time a code of laws would be developed under which all such transportation cases could be promptly adjudicated. I think the establishment of such courts is a necessity of the times, arising from the great interests involved. *Ordinary courts are not properly constituted for that purpose, and the time required for the adjudication of claims is so long and the expenses so great as to defeat the very object for which proceedings are instituted.*".

In their report the committee, in commenting upon this and other testimony, say: "Evidence is not wanting to prove that the remedy at common law is impracticable and of little advantage to the ordinary shipper. It has been found so by the people of the States in dealing with their local traffic, and, as has been shown, their recognition of the fact has been authoritatively recorded in nearly every State in the Union by statutory enactments, and in many of them by the establishment of commissions in an effort to provide for the shipper that prompt and effective remedy which it

has been found by experience that recourse to the common law has failed to afford. The reasons for this apply with even greater force to the more complicated transactions of interstate commerce than to State traffic, because the former involves more perplexing questions and are affected by a greater diversity of varying conditions. The legislatures of the States, the reports of the State commissions, the records of the courts, the evidence of shippers, and, in short, the whole current of testimony is to the same effect, and the fact stated is also admitted by some of the highest railroad authorities."

See also Larrabee's Railroad Question, pp. 268 and 428.

Stickney, Railway Problem, p. 115.

But probably the strongest demand for this provision of the law comes from the fact that suits between private parties and the companies are not appropriate to test the reasonableness of rates. Generally such suits are for small amounts as excessive charges imposed upon a single article of commerce. To determine whether the rate on this article is reasonable the entire business of the carrier, as well as all the conditions which affect and control rates, must be considered. In most cases this would require the expenditure of large sums out of all proportion to the amount in controversy. Were experience lacking on the subject it is obvious that but few persons would undertake to carry on such an unequal and unprofitable contest. Besides this, no suit of this character would settle any question except the particular one involved and only between the immediate parties. As a consequence, every shipper, and the same shipper many times, would, unless the field were abandoned, be compelled to litigate with the companies questions of importance and magnitude far in excess of their claims. Under such conditions the public interests demand that the litigation be terminated in one suit, and that the State assume burdens which no citizen should be called upon to bear.

In this connection the language of Mr. Justice Cahill, of Michigan, is pertinent: "If anything were needed to demonstrate that the question of the reasonableness of rates of fares were legislative rather than judicial, the record in this case would go far towards doing so. The plaintiff claims to have been injured to the extent of $1.60. To redress this grievance he brought this suit, and the defendant's position is that it has the right to show that the fare tendered was unreasonable in amount, reference being had to all the facts that must affect the question. If the contention of the defendant be admitted and the question of reasonableness be tried and determined by the courts, nothing is settled by it except the question of the plaintiff's right to the small sum claimed as damages. No principle is or can be settled in this suit that will necessarily govern in other suits of a similar character, because the facts and circumstances that affect the case may, and usually must, be somewhat different. In a court of law every case must stand upon its own facts, and neither party to a suit could be concluded by the judgment in a former suit to which they were neither parties nor privies. If, then, the reasonableness of a fare is a judicial question, to be settled only by a suit at law by the person aggrieved, the public is, practically, without remedy, as the cost and expense of the litigation must inevitably exceed any possible recovery. It may be said with some force that this circumstance ought not to control or have much weight in determining a question of right; but, keeping in view the admitted fact that the power of control must rest somewhere, the practical facilities on the one hand and difficulties on the other are considerations that might properly weigh with those who were settling, in the formation of a constitution, a method of governmental control."

Wellman *v.* Railroad Co., 83 Mich., 624.

That every rate must be measured by the entire business of the carrier is thus clearly shown by the Interstate Commerce Commission: "When classification is made in the way explained it is very obvious that the rate imposed upon any single article of commerce, if it is challenged as unjust, cannot be taken up by itself and its reasonableness determined without regard to what is charged upon other articles which are subject to transportation by the same carrier. No article is rated independently. No one article is rated upon considerations that pertain to itself alone; and to determine whether the rate is reasonable it is necessary in every instance to go beyond the single article and consider the whole subject of classification and the whole business of the carrier under it. To challenge the charge for the carriage of a single article is to challenge to some extent the whole rate-sheet and calls for careful consideration of the question whether the rate to be charged to the one article is out of just proportion when all the circumstances and conditions which the railway officers must be supposed to have had in mind in making the classification and the rating are considered. * * * It is only when the whole traffic of the carrier is taken into account and the rates of the several classes of articles are considered and compared that a judgment can be formed whether a low rate upon any particular article of commerce is likely seriously to affect the net returns from the whole. A court, therefore, in undertaking to pass upon a single rate as a matter of law must necessarily go to the very foundation of rating. It must place itself in the position of a carrier and substitute its own discretion and business judgment for that which has made the classification. * * * The futility of the suggested rule becomes all the more apparent when it is attempted to be applied to the transportation of a single article of commerce only, as, for example, breadstuffs; for, as already shown, the relative charges between any one article

of commerce and the others which the carrier transports are made from considerations of policy and in the discretion of the carrier, so that one may be, if considered by itself, unreasonably low or unreasonably high without necessarily affecting at all the income of the carrier when a readjustment of rates for all is made in view of that fact."

5th Ann. Rep. Int. Com. Com., pp. 16, 17, 20.

It was no doubt upon considerations such as these that Mr. Justice Miller wrote his concurring opinion in the *Minnesota* case and gave the sanction of his great name to the principles embodied in this legislation. "But," said he, "until the judiciary has been appealed to to declare the regulations made, whether by the legislature or by the commission, voidable for the reasons mentioned, the *tariff of rates so fixed is the law of the land, and must be submitted to both by the carrier and the parties with whom he deals.*

"That the proper if not the only mode of judicial relief against the tariff of rates established by the legislature or by its commission is by a bill in chancery asserting its unreasonable character and its conflict with the Constitution of the United States, and asking a decree of court forbidding the corporation from exacting such fare as excessive or establishing its right to collect the rates as being within the limits of a just compensation for the service rendered.

"*That until this is done it is not competent for each individual having dealings with the carrying corporation or for the corporation with regard to each individual who demands its services to raise a contest in the courts over the questions which ought to be settled in this general and conclusive method.*"

R. R. Co. *v.* Minnesota, 134 U. S., 460.

(4) If, however, section 5 be held inoperative the remainder of the law can stand.

The rules and principles of interpretation applicable to

such cases are thus stated by this Court, the supreme court of Texas, and leading text-writers:

"Statutes that are constitutional in part only will be upheld so far as they are not in conflict with the Constitution, provided the allowed and prohibited parts are severable."

Packet Co. *v.* Keokuk, 95 U. S., 89.

"It is an elementary principle that the same statute may be in part constitutional and in part unconstitutional, and that if the parts are wholly independent of each other that which is constitutional may stand, while that which is unconstitutional may be rejected."

Allen *v.* Louisiana, 103 U. S., 83.

"It is only when different clauses of the act are so dependent upon each other that it is evident the legislature would not have enacted one of them without the other, *as when the two things provided are the necessary parts of one system*, that the whole act will fall with the invalidity of one clause. When there is no such connection and dependency the act will stand, though different parts of it are rejected."

Huntingdon *v.* Worthen, 120 U. S., 102.

"The rule for the construction of statutes in partial conflict with the Constitution is that if the portion repugnant to the fundamental law can be stricken out and that which remains is complete in itself and 'capable of being executed in accordance with the legislative intent, it must be sustained.'"

Ex parte Towles, 48 Tex., 421, quoting Cooley on Constitutional Limitations, 178.

"If the unconstitutional provision be but incidental to the main purpose and be not essential to give effect to the statute, such part may be rejected, leaving the remainder to stand."

Zwernemann *v.* Von Rosenberg, 76 Texas, 527.

"If, when the unconstitutional portion is stricken out, that which remains is complete in itself and capable of being

executed with the apparent legislative intent, wholly independent of that which was rejected, it must be sustained."

Cooley, Const. Limitations (6 ed.), 211.

"The vicious part must be distinct and separable and when stricken out enough must remain to be a complete act capable of being carried into effect and sufficient to accomplish the object of the law as passed, in accordance with the intention of the legislature."

Suth. Stat. Const., section 169.

"To prevent the void part of a statute from vitiating other portions it must be possible to separate them. This separation would generally be easy where there is inserted in an act, otherwise constitutional, a distinct provision which can have no operation or effect, according to its terms, but such as is in violation of the Constitution. Such a provision would be absolutely void, and it is difficult to conceive how it can be so blended with other and constitutional provisions as not to be capable of literal separation and exclusion. It may, however, be so related to other provisions as to infect them by dependence, but the actual separation of the vicious part would be practicable."

Suth. Stat. Constr., sect. 171.

Tested by those rules, it is scarcely an open question that, disregarding sections 5, 6, and 7, the act may be upheld. It is readily conceded that section 5 is an important and valuable provision. It unquestionably renders the act more effective and affords fuller protection to the public. But if stricken out enough will remain to constitute an entire act, capable of being carried into effect and sufficient to accomplish the general purpose of the law as passed. This purpose, broadly speaking, was to create a railroad commission with power to prevent discrimination, and extortion and establish freight and passenger tariffs. To argue successfully that this purpose cannot be accomplished if section 5 is excluded would undoubtedly prove the validity of the entire act, because it is everywhere admitted that commissions may be organized with the powers named. This section is

easily severable from the remainder of the law without destroying its entirety. None of the other provisions are legally dependent upon this section or so related to it that they could not go into effect without it. In the language of the authorities this section is a distinct provision inserted in an act otherwise confessedly constitutional. If the law be read without sections 5, 6, and 7, it will disclose an entire, symmetrical, and unbroken enactment on the subject uppermost in the legislative mind. If it were read to one who had never seen it, omitting these sections, no thought of omissions would occur, and the true rule of construction is that the "striking out is not necessarily by erasing words, but it may be by disregarding the unconstitutional provision and reading the statute as if that provision was not there."

R. R. Co. *v.* Schutte, 103 U. S., 142.

Whether the valid portion is separable from the invalid is the only true test of the constitutionality of a statute attacked as being in conflict with the Constitution. It should not be permissible to speculate upon what the legislature would have done had the objectionable feature been omitted.

Weil *v.* Calhoun, 25 Fed. Rep., 873.

The very fact of enacting the law indicates the legislative preference, and if it be said that the courts may declare an entire act inoperative because in their judgment the legislature would not under any conditions have passed the law without the part complained of is practically to deny the settled rule of severability.

But if the court shall consider the question in that view, and as presented by the circuit judge and counsel for appellees, the history of the measure demonstrates that the demand for a commission was so pronounced the legislature, if shown the invalidity of this section, would have passed the act without it. The issue submitted to the people was not the particular commission which was subse-

quently created, but a commission to "regulate railroad freight and passenger tariffs, to correct abuses, and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State."

General Laws Texas, 1889, p. 171.

The question was simply a commission *vel non*. The joint resolution which submitted the constitutional amendment under which the act was passed was approved April 8, 1889. The present governor of Texas, who was first elected in 1890, did not previous to his election advocate any particular character of commission. In his opening speech, April 19, 1890, from which he did not afterwards vary, he said: "I am in favor of the State regulating and controlling the rates of railway traffic having origin and destination within her limits; to the end that justice may be done the public. As an instrument for this purpose, if I am elected governor and the constitutional amendment is adopted, I shall do my part in having an effective railway commission created and clothed with all the power necessary to make, establish, and maintain, under rules prescribed by law, reasonable rates of charges for the transportation of passengers and freight." The convention which nominated him for governor adopted August 13, 1890, the following: "We believe that it is the right and duty of the State to regulate and control the public highways within its limits, and that effective regulation is impracticable without the agency of a railway commission. Therefore we favor and will support the amendment to article 10, section 2, of the present constitution, relating to railroads, submitted to a vote of the people by the last legislature, and we demand and pledge the enactment of a law creating a commission clothed with any power necessary to prevent abuses and discriminations, and to make, establish and maintain reasonable rates of railway charges for the transportation of passengers and freight having origin and

destination within the limits of this State." The antagonistic policy was thus clearly stated by the circuit judge who tried this cause in a public letter declining the use of his name as an opposition candidate for governor:

"WAUKESHA, WIS., *August 22*, 1890.

——— ———:

"In the present stage of the development of Texas a State commission for the regulation of railroad traffic, *however constituted*, would be more likely to hurt than to help the general welfare.

"(Signed) A. P. MCCORMICK.

"(Galveston News, August 27, 1890.)"

The issue thus joined was determined November 4, 1890, by the adoption of the amendment by a majority of 108,848. The governor and other State officers, as well as a large majority of both houses of the legislature, were chosen on this issue. In his message to the legislature the governor recommended a law somewhat similar to the one enacted, though in the particular we are now considering it is materially different. But, what is more important in this connection, he advised the passage of a law divided into independent sections, so that if any of them were held invalid, the remainder of the act could stand. On this point he said: "In the general arrangement and construction of the act judicious care should be exercised. Doubtless it would be wise to so frame it that each particular branch or topic treated will be confined to an independent section. Exceptions, provisos, and qualifying clauses to any section should be avoided. If either of the like is proposed and possesses merit, let it stand alone. *By this method any provision of the act that may be held invalid can be removed and yet leave the main object and effect of the law unimpaired.*"

Senate Jour., 1891, pp. 56, 57.

It is appropriately urged by counsel for appellees that the opinion and recommendations of the governor, which were

acted upon by the legislature, shall be given controlling weight, and it is manifest that it was the executive and legislative purpose that the law should be operative notwithstanding any obnoxious features. It is a fundamental canon of construction that this intent should prevail. Under the most extreme cases this must be held to settle the question. In Poindexter *v.* Greenhow, 114 U. S., 305, Mr. Justice Matthews, delivering the opinion of the court, said: "It is undoubtedly true that there may be cases where one part of a statute may be enforced as constitutional and another be declared inoperative and void, because unconstitutional; but these are cases where the parts are so distinctly separable that each can stand alone, and where the court is able to see and to declare that the intention of the legislature was that the part pronounced valid should be enforceable, even though the other part should fail." In the case at bar we are not left to inference, but the intention that the valid portion shall be enforced is directly and affirmatively made known.

Harrell *v.* Lynch, 65 Texas, 149.

Independently of this consideration, however, as heretofore insisted, the supposed void part of the statute is plainly separable from the remainder, and in view of the pronounced demand for a commission it is obvious that the legislature, if convinced of the invalidity of this section, would have passed the act without it.

Tiernan *v.* Rinker, 102 U. S., 123.
Penniman's case, 103 U. S., 717.
Prosser *v.* Illinois, 116 U. S., 263.
Asher *v.* Texas, 128 U. S., 129.
Field *v.* Clark, 143 U. S., 695.
3 Am. and Eng. En. Law, 676.
In re Ryers, 72 N. Y., 6.
Sweet *v.* Syracuse, 129 N. Y., 349.
R. R. *v.* State, 17 S. W. Rep. (Ark.), 806.
McPherson *v.* Blacker, 52 N. W. Rep., 469.

[11] Moore v. N.O. 32 La. An. 742
Cole v. " " 42 " " 92

An examination of the cases in this Court in which statutes have been held to be in violation of the Constitution or laws of the United States shows that from its organization until the present time it has been the general rule of the Court, rarely departed from, to hold the obnoxious features void, leaving the remainder in force.

131 U. S., Appendix C. C. XXXV *et seq.*, where all cases are collected.

The precise question here discussed was decided according to our contention by Mr. Justice Woods, when circuit judge, in 1881. The commission law of Georgia provides that the rates established by the commission shall be deemed and accepted in all courts as *sufficient* evidence that the rates are just and reasonable. After sustaining this provision on the ground that it simply prescribed the effect of evidence, he said: "But even if this provision of the act under consideration were unconstitutional it would not render inoperative the other sections of the statute, from which this provision can be easily removed and yet leave the main object and purpose of the law unimpaired. (*Packet Co. v. Keokuk*, 95 U. S., 80.)"

Tilley *v.* R. R. Co., 5 Fed. Rep., 660.

Fourth.

May the courts inquire into the reasonableness of rates established by the commission, except in the manner prescribed by the act; and, if so, are the rates established by the Railroad Commission of Texas unreasonable and unjust, as alleged in the bills of complaint?

(1) As a matter of course, if the law is valid, in controversies between the companies and private parties involving the rates, inquiry except as prescribed is not permissible. The same result follows as to suits against the commission.

upon the further principle that the State may not be sued save by its consent, and then only upon the terms it may propose. Following the popular construction of the decisions of this Court, the statute contemplates that in suits brought in the name of the State the reasonableness of rates may be fully inquired into at any time. It may therefore be said that our statute is framed upon the assumption that whether rates fixed by the commission are reasonable is a judicial question. As an abstract proposition it is believed that when rates are established either by the legislature or a commission, whether they are reasonable is a legislative or administrative question, and not ordinarily the subject of judicial investigation and determination.

R. R. Co. *v.* Minnesota, 134 U. S., 460, per Bradley, justice.
R. R. Co. *v.* Maryland, 21 Wall., 471.
4 An. Rep. Int. Stat. Com. Com., 17, 18, 19, 20.
Tilley *v.* R. R. Co., 5 Fed. Rep., 653.
Wellman *v.* R. R. Co., 83 Mich., 623.
R. R. Co. *v.* Smith, 70 Ga., 694.
Larrabee, p. 378.

In view of the case of Budd *v.* New York, 143 U. S., 517, decided since the enactment of our statute, the question should be considered settled. It was there held that it was decided in *Munn* v. *Illinois* "that the property being clothed with a public interest, what was a reasonable compensation for its use was not a judicial but a legislative question," and that "we must regard the principle maintained in *Munn* v. *Illinois* as firmly established."

It is also held in effect that the courts cannot inquire into the reasonableness of rates fixed by the legislature. Unquestionably the power to establish rates is legislative and not judicial. It would reach the full stature of absurdity to say that the courts may fix and establish rates. If, therefore, the power is legislative, and may be delegated to a

commission, both of which propositions have been repeatedly affirmed by this Court, upon what hypothesis can it be said that the *character of the power* is changed by the process of delegation? In all cases where a delegation of legislative power is held permissible it has carried with it as full and unobstructed authority as if exercised by the legislature. Upon what principle can a distinction be made here?

(2) Assuming, however, that on this appeal the question will be deemed judicial, the important inquiry is, What considerations should have weight in determining the reasonableness of rates, and what general rules should control the courts when appealed to?

The broad contention of those interested in railway properties and the basis of the complaint in this case is that neither legislatures nor commissions may establish rates which will not yield revenue sufficient to pay operating expenses, interest on bonds, and some dividend to stockholders. The notable judicial authority for this rule is the opinion of Mr. Justice Brewer, when circuit judge, in the case of R. R. Co. *v.* Dey, 35 Fed. Rep., 866. In this opinion it is said that when the proposed rates will give some compensation, however small, to the owners of railroad property the courts have no power to interfere, and that by compensation is meant payment of cost of service, interest on bonds, and then some dividend. On the contrary, appellants insist that these are only factors to be looked to in such inquiries; that of necessity rates are based upon considerations so multitudinous and varying as to afford no definite rule for their ascertainment, and that the courts cannot substitute their opinion of what is reasonable for that of commission, but are limited to protection of such interests against manifest abuse of the discretion confided to commissions. Some of the more important elements to be considered in determining the reasonableness of rates will be stated.

It seems to be recognized by opposite schools of governmental opinion that the State may construct and operate railways.

State *v.* R. R. Co., 24 Texas, 123, per Roberts, justice.
R. R. Co. *v.* Maryland, 21 Wall., 470, 471.
R. R. Co. *v.* Minnesota, 134 U. S., 461, per Bradley, justice.
Budd *v.* New York, 143 U. S., 549, per Brewer, justice.

In an address recently delivered before the American Bar Association, Mr. Justice Brown intimates that, with reform in the civil service, government ownership and operation of railways under present conditions would be unobjectionable (27 Am. Law Rev., 678, 679). The same opinion is expressed by Governor Larrabee (The Railroad Question, 413). If this should come to pass and this Court hold that the act of February 7, 1853, heretofore referred to, is neither obsolete nor repealable, it is gratifying to note that in Texas the basis of action is already settled. By section 17 of that act it is provided:

"If the legislature of this State shall at any time make a provision by law for the repayment to any such company of the amount expended by them in the construction of said road, together with all moneys for permanent fixtures, cars, engines, machinery, chattels, and real property then in use for the said road, with all moneys expended for repairs or otherwise, and interest on such sums at the rate of twelve per centum per annum, after deducting the amount of tolls, freights, passage money, and all moneys received from the sale of lands donated by the State to said company, with twelve per centum per annum interest on all such sums, then the road, with all its fixtures and appurtenances aforesaid and all the lands donated to the same by the State and remaining unsold, shall vest in and revert to the State: *Provided*, That the State shall not be required to pay or allow a greater rate of interest on any amount of the money so expended by any company which shall have been borrowed from this State

than the State shall have received for the same from such company."

Gen'l Laws Texas, 1853, p. 58.

The operation of railways by the State would be for public convenience, and their construction and maintenance would be provided for by taxation or the issuance of bonds. Under our form of government and in good conscience taxes and bonds should not be more than are reasonably adequate to accomplish these purposes. The operation of the roads would no doubt be assimilated to the postal service, charging for transportation a reasonable sum, based upon many considerations, such as the value of the commodity, cost of service, that a natural and free movement of commerce be obtained, and the like, the least important being the cost of construction and service, making up any deficiency by taxation. Of course, in such case the State would have the power to levy and collect such tariffs as would be necessary to pay for the operation of the roads and a fair interest on the cost of construction. But it is unreasonable to suppose that such arbitrary power would be exercised. On the contrary, the reasonableness of the rates would, as in other cases of the expenditure of public moneys and the maintenance of public institutions, be established upon considerations other than the cost of construction and operation, such as the convenience of the public, and to induce a fair exchange of commodities. The controlling motive would be to furnish facilities for commercial intercourse which might be easily stifled by rates which would yield return sufficient to pay expenses and interest on the cost of the property. The principle would not be different if bonds were issued by the State for a tariff that would pay cost of service, and interest on the bonds might interdict exchange or become oppressive. The rates would not necessarily be based upon payment of cost of service and interest, but upon these and other and, perhaps, antagonistic elements, and

where, under these rules, there was lack of funds from the operation of the roads to pay interest on the bonds of the State the balance would be provided by taxation. In this case, instead of exercising the power itself, the State has delegated this sovereign right to corporations, granting to them valuable franchises, large bodies of land, the power of eminent domain, and authority to take tolls. In substance, the corporations are authorized to perform the functions of the State in this particular, with the important reservation that the State may regulate and control the imposition of tolls.

Blake *v.* R. R. Co., 19 Minn., 369.
Stickney, Railway Problem, 241, 242.

In such cases why should the companies be permitted to establish rates upon different principles? Why should they fix rates as if they were organized solely for private gain? It is frequently said that the companies and the bondholders made their investments with the implied understanding that they would be permitted to charge reasonable rates. This is true, but whether rates are reasonable does not depend solely upon the revenue they will yield. As the State was expected in the operation of its railways to make less when seasons of commercial depression came, so the companies stand upon no higher ground and take their franchises with notice that their charges are not necessarily based upon their output, but rest in the sovereign discretion of the State, pledged to regulate its highways in the public interest and not exclusively as private investments. The rights of the companies and bondholders are subordinate to those of the public.

Talcott *v.* Township of Pine Grove, 1 Flippin, 45.
Gates *v.* R. R. Co., 53 Conn., 343.
2 Beach, Corp., p. 1240.
Texas *v.* R. R. Co., 48 Am. & Eng. R. R. Cases, 656.

Stock and bonds of railroads are issued with the knowledge that the rates may be regulated upon this basis by the State, and mortgages upon the income yield to this rule.

Granger cases, 94 U. S., 133, 161, 176.

Tilley *v.* R. R. Co., 5 Fed. Rep., 654.

If any other principle prevailed, government, besides granting extraordinary powers to the companies, would practically guarantee investments in such properties while all others remained subject to the laws of trade, though it laid an unjust and oppressive burden upon the commerce of the State.

In re Excessive Freight Rates, 4 Int. Com. Com. Rep., 72.

Clark, Railroad Commissions, 92, 93.

Upon general and broad principles of justice it is plain that in any view of the question this rule must be modified to the extent that stock and bonds should be *bona fide* and be issued only to carry out the legitimate purposes of the corporations. Direct but appropriate language is used by the Interstate Commerce Commission on this subject:

"When freight rates on agricultural products are demanded which will under all circumstances pay operating expenses, interest on bonded debt or fixed charges, and in addition a dividend on the capital stock, and the shipper may not question the extent and good faith of such debt, stock, and obligations, he does not recognize the justice of the demand, nor is his respect for such a rule of compensation increased by the fact that it may have a high judicial sanction. Plain people believe that in so far as reasonable rates are measured by fixed charges, obligations and railroad investments, these should be actual and in good faith."

In re Excessive Freight Rates, 4 Int. Com. Com. Rep., 72.

Larrabee, Railroad Question, 377.

Whatever the rule may be elsewhere, by the constitution and laws of Texas stock and bonds may not be issued except for the value of the roads and their maintenance, and all fictitious stock and bonds are void for every purpose, and therefore cannot be made the basis for the imposition of rates. Upon equally sound principles and in view of our constitutional and statutory provisions cited below, in whatever light the question may be regarded, if the bonded indebtedness equal the value of the property, any claim to dividend on the stock must be excluded.

"No corporation shall issue stock or bonds except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void."

Constitution, article 12, section 6.

"No railroad corporation shall issue any stock or bonds except for money, labor, or property actually received and applied to the purpose for which such corporation was organized; nor shall it issue any shares of stock in said company except at its par value and to actual subscribers who pay or become liable to pay the par value thereof."

"All fictitious dividends and other fictitious increase of the capital stock or indebtedness of any such corporation shall be void."

Revised Statutes, arts. 4154, 4155.

"Such corporation shall have the right from time to time to borrow such sums of money as may be necessary for constructing, completing, improving, or operating its railway, and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its corporate property and franchise to secure the payment of any debt contracted by such corporation for the purposes aforesaid."

Revised Statutes, art. 4219.

It is apparent from these citations that in our State, in so far as rates are to be measured by stock and bonds, they must be based upon a fair return on the actual value of the property and reasonable operating expenses. If the courts

undertake to lay down the legal measure of reasonable rates with reference solely to stock and bonds and maintenance, upon the idea that railways are constructed exclusively for private gain (a doctrine believed to be wholly indefensible), this is a more equitable rule than that insisted upon by the corporations. By statute in Oregon a rate is not unreasonable if it allows "a fair and just return on the value of the road, appurtenances, and equipments," and it has been held by the supreme court of that State that evidence that rates established by a commission were not a fair return on the amount of the bonded debt, capital stock, and current debts did not overcome the *prima facie* reasonableness of the rates so established.

State *v.* R. R. Co., 31 Pac. Rep., 960.

After enumerating some of the factors of a reasonable rate, Governor Larrabee says:

"A schedule finally must be considered reasonable if it enables the company for which it is prescribed to earn under efficient and economical management sufficient to maintain its road in proper condition and a fair rate of interest upon a fair valuation of its road. Property is never worth more than what it can be duplicated for, and railroad property is no exception to the rule. If there has been a depreciation in the property of the company, it should not demand dividends upon values which no longer exist; nor can the same returns be conceded to railroad property as to private capital. Its investment is permanent and well secured, if it is honestly and intelligently made, and its dividends are net returns after the payment of all expenses, including taxes, cost of management and maintenance. The three per cent. bonds of the United States Government find a ready sale at prices above par. Were there less speculation and more honesty and stability in railroad management, railroad securities yielding a revenue of from 2½ to 4 per cent. on the actual investment would be eagerly sought after by conservative capitalists."

Larrabee, Railroad Question, 387.

The rule contended for by the companies, moreover, is contrary to that laid down by this Court. In the case of Dow v. Beidelman, 125 U. S., 680, it appeared that the cost of constructing the Memphis and Little Rock railroad was $4,000,000, and the company had a bonded debt of $2,850,000, bearing interest at 8 per cent. per annum. The net income of the company for 1886 was $162,000, earned principally from passenger traffic, and the charge for transportation that year was five cents per mile. The legislature in 1887 reduced the charge to three cents per mile, and it was insisted that the reduction was unreasonable. It also appeared that with the same traffic and charging for transportation at the rate of three cents per mile the net income would only be $58,000, which would pay less than one and one-half per cent. on the cost of the road and only a small sum over two per cent. on its bonded debt. Under these facts the court said it could not say the rate was unreasonable, adding: "Still less does it appear that there has been any such confiscation as amounts to a taking of property without due process of law."

The conclusion is reached, therefore, that the claim of the companies in this case to the effect that the rates are necessarily to be based upon operating expenses, interest on bonds, and dividend is not supported either by principle or authority, but that they rest upon numberless considerations. It will readily be granted that if consistent with the conditions of trade and other public interests the rate should be such as would pay operating expenses and a profit, but we are now considering the extent of the legal right of the companies. The contention of the companies is not only unsound, but impracticable. Rates are governed by no fixed rule, are in the highest degree arbitrary, and must be left to the sound discretion of the legislature or to the authority to which the ascertainment thereof is delegated by the legislature. This subject was exhaustively inquired into by the Senate Committee on Commerce in 1885, during

the session of which the testimony of a large number of business men, railroad experts, and railroad commissioners was taken, and it may be said to represent the consensus of American opinion on the subject of rates to the effect that there cannot be in the nature of things any definite or fixed rule by which they may be established.

Report of Committee, pp. 58, 175, 177, 187, 192, 217.

Mr. Stickney, formerly president of one of the leading railroads of the West, in his work on the Railway Problem (p. 189), says on this subject: "The conditions mentioned under these two heads seem to complicate somewhat the construction of a schedule of standard average rates; but when it is remembered that the whole question is *capable of only approximations*, and that under the tax theory there no longer exists the necessity of ascertaining the *quantum meruit* of each, or, for that matter, of any shipment, the difficulties arising therefrom do not appear very important."

In a report to the Senate of unusual strength and clearness Mr. Commissioner Morrison, of the Interstate Commerce Commission, said:

"In determining what is a reasonable rate many things need to be considered which apparently *are purely arbitrary*."

4 Int. State Com. Com. Rep., 74.

In a report of the Interstate Commerce Commission to Congress in 1887 it is said: "Of the duties devolved upon the commission by the act to regulate commerce none is more difficult and perplexing than that of passing upon complaints made of rates as being unreasonable. The question of the reasonableness of rates involves so many considerations which may at first blush seem foreign that it is quite impossible to deal with it on purely mathematical principles or on any principles whatever without a consciousness that no conclusion which may be reached can by demonstration be shown to be absolutely correct. Some of the difficulties in the way have been indicated in what

has been said on classification, and it has been shown that to take each class of freight by itself and measure the reasonableness of charges by reference to the cost of transporting that particular class, though it might seem abstractly just, would neither be practicable for the carriers nor consistent with the public interest. The public interest is best served when the rates are so apportioned as to encourage the largest practicable exchange of products between different sections of our country and with foreign countries, and this can only be done by making *value an important consideration* and by placing upon the higher classes of freight some share of the burden that on a relatively equal apportionment, if service alone were considered, would fall upon those of less value."

1 Inter. Com. Com. Rep., 313.

The Interstate Commerce Commission thus stated, in the syllabus of the case cited, some of the varying considerations which enter into a reasonable and just rate: "In determining what is a just and reasonable rate for a particular commodity the commission will take into consideration the earnings and expenses of operation, the rates charged upon the same commodity by other roads as nearly similarly situated as may be, the diversities between the railroad in question and such other railroads, the relative amount of through and local business, the proportion borne by the commodity in question to the remainder of the local traffic, *the market value of the commodity and its gradual reduction*, the reduction made by the carrier upon other articles which are consumed and necessarily required by the producers of the article in question, and other circumstances affecting the traffic itself and as related to other considerations entering into the charges of a carrier."

Evans *v.* R. R. Co., 1 Int. Com. Com. Rep., 325.

In the case of Thurber *et al. v.* Railroad Company *et al.*, 3 Interstate Commerce Commission Reports, 499, some of the

elements of a reasonable rate are thus enumerated: "In another case before the commission the principles or considerations that mainly govern committees charged with the preparation of a classification were stated in evidence by a prominent official to be as follows:

"'The competitive element or the rates made necessary by competition; volume of the business or tonnage; the direction in which the freight moves, whether that in which most of the freight is transported or the reverse direction, in which the empty cars move; *the value of the article, to some extent*; its bulk; its weight and the risk attending transportation; the facilities required for particular or unusual transportation; the conditions attending transportation, embracing many things, such as the necessity for furnishing special equipment, as in the case of cars for dressed beef or cars specially adapted for freight of a perishable nature, large cars for freight of extraordinary bulk, &c.; also the analogy which the article classed bears to other articles in the classification; the conditions under which different railroad companies can afford to transport traffic have a large influence; the volume of a particular traffic upon a line of road, and the nature of the competition that it has to meet.'

"It will be observed that these considerations have reference almost exclusively to the relation of carriers to the traffic, and that no prominence is given to any duty carriers owe to the public or to any limitations upon the interests of carriers. The public character of carriers and the public interests affected beneficially or injuriously by the conditions of the service rendered require a just degree of consideration for those interests, and in general it is believed they are not disregarded, though in some and perhaps many instances injustice may be done by too much concern for the carrier and too little for the public. As was said in the Second Annual Report (page 9), the commission has laid down the principle 'that carriers in making rates cannot arrange them from an exclusive regard to their own interest, but that they must respect the interests of those who

may have occasion to employ their services and subordinate their own interests to the rules of relative equality and justice which the act prescribes.'"

So also it is laid down as fundamental that the interest of the carrier is not alone to be considered in fixing a rate, but the interest of the public is paramount and should be given its due weight.

2 Annual Rep. Int. Com. Com., 9.
2 Int. Com. Com. Rep., 52.
3 Int. Com. Com. Rep., 499, 500.
4 Int. Com. Com. Rep., 588.

It is also said that where railroads are constructed in a territory where the traffic is insufficient they are not authorized to levy a rate sufficient to pay their expenses and indebtedness, but must wait for the development of the country for profits.

2 Int. Com. Com. Rep., 388.

That the rule insisted upon the companies is unsound and incapable of being put into practice and that the question of the reasonableness of rates should be left to the judgment and discretion of competent administrative authorities is thus conclusively shown in an exceptionally strong and comprehensive report of the Interstate Commerce Commission, prepared, it is understood, by Judge Cooley:

"One cause for delay of obedience which has taken place is no doubt to be found in the fact that a belief prevails quite extensively among the carriers that no matter what may be the decision made by the commission or the nature of the case it has passed upon the courts may review its conclusions. This not only tends very largely to embarrass the commission in the action taken, but also to incline the carriers to take risks which otherwise they might be careful to avoid. They are encouraged in this course by some decisions of courts of first instance, which have somewhat hastily assumed that all questions arising under the act to

regulate commerce must necessarily be questions of law and therefore that the proper tribunals to decide conclusively upon them must be those which are invested with judicial power under the Constitution. Where such an idea prevails, it is very likely to be assumed that the action of the commission in acquiring jurisdiction of the cases over which it is given authority may be tested by such technical rules as are applied to inferior judicial tribunals, and that the carrier must not merely have full opportunity for hearing and for making defense when its conduct is called into question, but that it must be proceeded against, when questions of administration are in issue, precisely as it would be if charged with criminal conduct and arraigned upon an indictment. That the influence of this belief upon cases passed upon by the commission is unfortunate can scarcely be questioned. It is, of course, always possible that a complaint brought before the commission for its judgment will present questions which are purely questions of law; and it is not disputed that in all such cases the decisions made must necessarily be open and ought to be open for judicial investigation afterwards. A case of this nature was presented shortly after the organization of the commission; the question being whether corporations doing an express business and other corporations engaged in transportation by rail, but not expressly named in the act to regulate commerce and therein declared to be embraced by its provisions, were in fact embraced by implication so as to be subject to regulation by the commission. It is very clear that no parties can, in respect to their business, be legally brought under the supervision and control of a special regulating tribunal without authority of law delegated for the purpose, and had the commission reached the conclusion that these corporations because of being auxiliary to the carriers named in the act were by implication embraced within its provisions, and therefore subject to the regulation provided for, there could be no doubt that the matter would be open to judicial inquiry afterwards to the same extent as if no decision had been made. This is for the obvious reason that no tribunal can draw to itself a jurisdiction not conferred by simply deciding that it possesses jurisdiction. Nor can it be doubted as against the carriers who were expressly named in the act that questions may often arise which are purely judicial in their nature, questions, for example, of

the proper construction of contracts, or of damages under contracts, or of the title to property, or of the right in some other than the owner to make use of property against the owner's will, either by contract or under special provisions of law. Such questions will commonly arise collaterally, but the manner in which they are presented is immaterial; if, in point of fact, they are judicial questions, no decision upon them by an administrative tribunal can be conclusive. When, however, the questions passed upon by the commission are purely administrative, it seems equally plain that the conclusions should be a finality, even though their enforcement may require judicial aid. It is neither consistent with the ordinary jurisdiction of courts that they should take up the questions for original consideration when they are purely administrative, nor could their doing so be made to harmonize with the purpose of the law. Indeed, if the courts might be appealed to to consider the questions anew, the very delay that must attend a contest over them in the courts would almost necessarily be such as to make any attempt to enforce the law of very little value. *The proposition, therefore, that administrative decisions should carry no more than a prima facie authority is as mischievous in practice as it is erroneous in principle.*

"A very common assumption by parties connected with railroad service is that the question of reasonableness of rates is one of law, and therefore that the decisions of the commission must, at all times when rates are involved, be subject to review. In some cases the carriers decided against have for a considerable period manifested a purpose not to obey an order of the commission reducing rates, claiming to have the advice of counsel that the action of the commission was not conclusive, and that they might safely await the determination of the courts in the premises. If they have finally acquiesced in the reduction, they have in some cases taken pains to have it understood that in doing so they were acting from motives of policy rather than because of any legal obligation which required it; but, in order that the question of rates should be one of law, it must be essential that there be some clear and definite rules whereby rates can be made, rules obligatory upon the carriers as well as upon the tribunals that regulate them and which may be enforced against the carriers as well as in their favor.

"If such rules existed, stockholders might have them enforced as against the action of the directors or other officers, in fixing the rates, and the courts, in the light of reason and authority, could deal with and apply them without at all entering upon the field of discretion and business policy; but every person familiar with the subject of transportation by rail is perfectly aware that there are no such rules. No managing officer claims that they exist, and not one undertakes to regulate his action in the determination of rates by fixed, definite, unchangeable principles such as constitute rules of law. On the contrary, every step leading to the establishment of rates that shall be charged for transportation begins and ends in the exercise of discretionary authority. Rates are never measured exclusively by the weight of the articles carried or by bulk or by the cost to the carrier of transporting them or by the value to the owner in having them transported, and if all of these and other considerations bearing upon the subject are taken into account in the determination of rates, as they habitually are, there is no rule by which it can be determined how much importance should be attached to any one or any combination of them.

"The first step towards the imposition of rates for the transportation of merchandise is a classification of the articles, which, it is supposed, may be offered for carriage, and the arranging of them into classes which are to bear different rates. In making this classification all the considerations that can properly bear upon it are supposed to be taken into account, and they are severally given such weight as the carrier believes it is proper to allow them under all the circumstances attending its own business and all the business of the section or of the interests that are to be served by his road. An important question always is, What is the probable cost of the carriage of the articles severally? And each is expected to be so classed that the rate it would bear would be such as to cover this cost and also to afford some profit to the carrier, but this is only a general rule. There are many cases in which property may be expected to be offered for transportation, the weight of which or the bulk is so out of proportion to its value that it cannot possibly, if considered by itself, bear such charges for transportation as will leave any profit to the carrier, and must consequently be carried at a rate that falls below the point of fair profit or not be carried at all.

"This well-known fact has led to the common saying that no traffic must be charged greater rates than it can bear—a saying intended to indicate the maximum, though often understood in quite an opposite sense. It is therefore found that in every classification many articles are so classified that the rates upon them will give to the carrier but very slight profit, and if the carrier were deliberately to refuse altogether to transport them the refusal might doubtless, in some cases, be justified if its own interests were exclusively to be considered. But the considerations that determine the classification in such a case look beyond the particular article and relieve what would be an oppressive and perhaps prohibitory burden by imposing some portion thereof upon other articles that can better afford to bear it. In every classification, therefore, articles whose value is very great in proportion to the bulk or weight are classed high in the expectation that the rates imposed upon them will pay, not merely the cost of transportation and a fair profit to the carrier, but will contribute also toward adequate remuneration for the transportation of such articles as cannot bear proportionate charges. Thus the cost of carriage to the carrier itself is no more a controlling consideration than is the value of the carriage to the owner of the property, and when both are taken into account questions of a public character also have weight, inasmuch as it is important to make a great public agency reasonably profitable to its owners and at the same time as useful as may be to the general public.

"This method of classification has been so long continued and so universal that every well-informed person in a community understands that, made as it is for the purposes of rating, it is based upon an almost infinite variety of circumstances, having regard not merely to the interests of the carrier and the value of his services, but also to the interests of the parties and sections served, and to considerations which may change from day to day so as to demand a change in the proportionate rating. Heretofore, as has been elsewhere shown, the classifications have been different in different parts of the country, as they still are to some extent. But, however they may have differed, they have always been constructed under the exercise of a discretionary authority, and to the extent that they are now brought into harmony it has been done in recognition of a general public policy with which the interests of the carriers,

as well of the sections of the country they serve, must be made to harmonize.

"If any court were to undertake to pass upon a question of reasonable rates as one of law it would be necessary to begin with this classification. It would be compelled to enter upon all the infinite variety of circumstances which influence the action of the carriers when they make it. It would necessarily undertake to give the proper force to each of these considerations, though it could only do this upon the discovery of some positive rule or rules of action leading it up to definite conclusions, such as no railroad manager and no public officer ever invested with authority of regulation has as yet been able to discover. A mere statement of the case shows how impossible it is that a question of classification should be one of law.

"If all carriers were under obligation to grade their rates to the cost or value of their own services exclusively, there would be more grounds for contending that the courts might deal with the question of reasonable rates. There would then at least be some elements approaching certainty by which the courts could be guided. If the cost could be ascertained, the court could apply the rule, its discretion in such cases being measured only by its judgment whether the carrier had or had not added to the cost too large a margin for profit. But a rule that should thus measure charges by cost would work an entire revolution in the business of transportation, since it would no longer be practicable to make articles whose value was great in proportion to bulk or weight aid in the transportation of articles of a different nature and the carrier would be compelled to demand upon the traffic in heavy and bulky articles such compensation as in many cases the traffic could not possibly bear. The long-haul commerce in some of the most important articles now transported for great distances would under such a requirement cease altogether, to the great detriment of the country at large and with the probable result that many of the carriers now usefully serving the country and in a prosperous condition would be seriously crippled. Nothing more disastrous to the commerce of the country could possibly happen than to require the rating for railroad transportation to be fixed exclusively by this one rule. But the consequences would be similar if any other single test of a carrier's charges were to be applied; and if any two or three

combined were made use of the probability of injury to the country and of disaster to the roads would be only a little farther removed. The carriers are entirely right in assuming, as they have done heretofore, that they best perform their duty to the public when they take into consideration, in making their classification and in fixing their rates, not merely the question of cost to themselves and of value to the owner of the property carried, but every consideration of a public measure which can fairly bear upon the question of public usefulness. The whole subject is so exclusively one of discretion with the railroad managers and the officers of associations who are brought directly in contact with the business itself and with the people whom they serve that they are not expected to defer to legal counsel upon questions of classification, but would assume that such a question was one altogether aside from his proper province, and would be much more likely to consult with the merchants or manufacturers or others who are to be the chief patrons of their roads than with one whose business was to deal with legal questions and not with questions of discretion and of purely business judgment.

"When classification is made in the way explained it is very obvious that the rate imposed upon any single article of commerce, if it is challenged as unjust, cannot be taken up by itself and its reasonableness determined without regard to what is charged upon other articles which are subject to transportation by the same carrier. No article is rated independently. No one article is rated from considerations that pertain to itself alone, and to determine whether the rate is reasonable it is necessary in every instance to go beyond the single article and consider the whole subject of classification and the whole business of the carrier under it. To challenge the charge for the carriage of a single article is to challenge to some extent the whole rate sheet, and calls for careful consideration of the question whether the rate to be charged to the one article is out of just proportion when all the circumstances and conditions which the railway officers must be supposed to have had in mind in making the classification and the rating are considered. Even the matter of cost may involve very many matters of mere discretion—questions of economy or extravagance in the establishment of agencies and the payment of commissions and salaries, and many other items as

to which the decision of the carrier itself cannot be conclusive, since all of these are necessarily paid by the public. Nevertheless these cannot be determined as questions of law, but must rest in the judgment of the competent administrative authorities, first of the railroads and then of the State.

"When the question of reasonable rates has been raised it has generally been in respect to some one article of traffic, and the attempt to consider it as a legal question necessarily has left out of view the whole method on which rates are made, and the investigation has proceeded after a manner which railroad officers could not possibly adopt in the management of their business. Restricting their attention altogether to one article of commerce, the court might perhaps in some cases say that the rate that had been prescribed for it was one the carrier could not afford, and that to compel its observance would be unjust and perhaps force the carrier into bankruptcy; but in making such a ruling the court would proceed upon the assumption that the classification and rating in all other respects were to be left to stand, and that no relief was to be had by modifications in respect to other articles. As already shown, the carrier in fixing a rate upon an article never proceeds upon such an assumption. If policy or necessity requires the giving of unprofitable rates as to one article, compensation is expected to be made by a proper adjustment of charges in respect to others, so that it is seldom, if ever, a necessary result that the reduction of a single rate would be attended with a loss of net revenue. It is only when the whole traffic of a carrier is taken into account and the rates of the several classes of articles are considered and compared that a judgment can be formed whether a low rate upon any particular article of commerce is likely seriously to affect the net returns from the whole. A court, therefore, in undertaking to pass upon a single rate as a matter of law, must necessarily go to the very foundation of rating. It must place itself in the position of a carrier and substitute its own discretion and business judgment for that which has made the classification. When it is considered that a decision upon classification or upon the rate imposed upon any article of commerce may affect rates in distant parts of the country so that an intelligent consideration of the subject will require some study of the railroad situation in every part of

the land, it may readily be believed that the court that should undertake to pass upon such a question as one of law, if it entered upon a proper investigation for the purpose, would have little time for the discharge of its more common judicial duties; but if its whole time were given to the subject the difficulty would still remain that in acting at all it would be acting exclusively in the field of discretionary authority.

"An attempt is made to give authority to the courts to interfere by the suggestion that property or charter contract rights or both are involved in the matter of fixing rates, and therefore that it is not possible the conclusions of administrative boards should be final. This is an endeavor by the mere use of words to confer jurisdiction upon the courts where the substance is altogether wanting. Property or contract rights are involved in these cases precisely as they are in numerous other cases of the exercise of power under the police authority of the State, either by the State itself or by its municipalities. It is said sometimes that the power may be exercised to such an extent that the property of the roads would in fact be confiscated, and the most alarming pictures have been exhibited to the public in some cases of boards bent upon destruction, prescribing rates so low that it would not be possible for the carriers to conform to them and at the same time perform their obligations to their creditors and their stockholders.

"The effort has sometimes been made to indicate a rule which must constitute the minimum of reduction in all cases, and it has been said that rates must not be made so low that the carriers would be left unable to pay interest on their obligations and something by way of dividends to stockholders after maintaining the road in proper condition and paying all running expenses. This comes nearer to a suggestion of a rule of law for these cases than any other that has come to the knowledge of the commission. But it is so far from being a rule of law that it is not even a rule of policy or a practical rule to which any name can be given and to which the carriers themselves or the public authorities can conform their actions. In the first place, when we take into consideration the question of the condition of roads and equipment, the proper improvements to be made, the new conveniences and appliances to be considered and made use of, if deemed desirable, and the in-

numerable questions that are involved in the matter of running expenses, it is very obvious that there can be no standard of expense which the courts can act upon and apply, but that the whole field is one of judgment in the exercise of a reasonable discretion by the managing powers or by the public authorities in reviewing their action.

"It is to be borne in mind also that there are many roads in the country that never have been and in all probability never will be able to pay their obligations and to pay dividends, even the slightest, to their stockholders. Many have become bankrupt and have gone into the hands of bondholders under reorganizations which have been made with creditors upon the money which their bonds represented, but such roads are almost invariably operated with benefit to the sections of the country served. They manage to pay running expenses, and, perhaps, keep up interest on present indebtedness; but this is as far as they can go under the stress of such competition as they are subjected to. If the rule suggested is a correct one and must be adhered to by public authority, then it is entirely impossible that those who operate these roads can prescribe excessive charges, since it is impossible to fix any rates that would bring their revenues up to the point of enabling them to pay any dividends. The rule, therefore, takes them entirely out of the control of any regulating commission. So far as concerns the matter of rates they may prescribe those that are exorbitant, considered by the standard of other roads; but this could only be at the expense of their business, and the exorbitant rates could only be collected from those who had no other resort. The roads would remain as mere instruments of oppression for such localities or interests as were out of reach of their competitors, and their functions as public agencies would be rendered practically worthless; but the rule suggested would also be one under which those roads would be entitled to charge the most which, instead of being built with the money of the stockholders themselves, had been constructed with money borrowed; the larger the debt the higher being the rates that would be legal. If a road were out of debt so that it had no bonds no provide for, it must content itself with such rates as would pay some dividend to its stockholders. If the road were in debt, though it perhaps served the same communities, it might be entitled to charge rates 50 or pos-

sibly 100 per cent. higher. Such a rule could hardly be one of sound public policy, for it could not possibly be to the encouragement of railroad building purely as an investment by those who have the means for the purpose, since the rates, it is conceded, when a road is paid for when built, might be cut so low as to leave the dividends little more than nominal. The promoters of a new road might far better make themselves the creditors of a corporation than to become the owners of its stock, and there would be a standing encouragement to resort to such devices as would make the certificates of stock represent anything rather than money actually invested in the building of the roads. But over and beyond all this, the attempt to apply the rule suggested would be absolutely futile for the reason that the rates prescribed for one road would necessarily affect all others that either directly or indirectly came in competition with it. If, therefore, of two roads competing for business between important points, one were very largely indebted, so that at rates fixed by the official board it were barely able to pay running expenses and interest, and the other were free from indebtedness and able to pay large dividends, any action of the public authorities whereby the rates of the last-named road were reduced, and at the same time the rates of the other not affected, would be plainly and obviously impossible. The one must put down its charges when the rates of the other are forced down. The regulation of the one in this particular would reach the other as inevitably as do the changes of the seasons which affect the one affect the other also.

"If, therefore, a court is to undertake to protect the one against its rates being so reduced as to endanger the payment of its interest it must reach out and restrain any regulation by the public authorities of the rates of all competitors, irrespective of the question whether they also are or are not subject to the same risks, or are so circumstanced that they can be. It is thus seen at every turn that the regulation of rates on the consideration of the pecuniary or other situation of any single road and without a survey of the whole field of operations, whereby its business may be affected, and under a supposition that what is done in respect to that road may be limited in its consequences, is entirely antagonistic to all principles of railroad transportation. The railroad man-

agers have perceived this from the very first, and it is because they have perceived this that they have been compelled to organize themselves into railroad associations for the purpose of agreeing upon classifications and rates and upon the great variety of other matters pertaining to the methods of conducting, interlocking, and overlapping business, and all business affected by competitive forces. The futility of the suggested rule becomes all the more apparent when it is attempted to be applied to the transportation of a single article of commerce only, as, for example, breadstuffs; for, as already shown, the relative charges between any one article of commerce and the others, which the carrier transports, are made from considerations of policy and in the discretion of the carrier, so that one may be, if considered by itself, unreasonably low or unreasonably high without necessarily affecting at all the income of the carrier when a readjustment of rates for all is made in view of that fact.

"The commission created by law for the regulation of railway transportation do not deal with questions of classification or of rates as questions of law, but as being what they necessarily are—questions of discretion and sound judgment—and they are not supposed to limit their consideration in any case exclusively to the rating of any single article of commerce or to any single carrier."

4th An. Rep. Int. Com. Com., 12–20.

(3.) The rates established by the commission are not unreasonable or unjust, even as alleged in the bills of complaint, measured either by the rule laid down by Mr. Justice Brewer or that which we insist upon.

As heretofore stated, it is alleged in the original bill that the company had not paid the interest on the first or second mortgage bonds for two years prior to the filing of the bill, and that the rates fixed by the commission would reduce the revenue $200,000 per annum. The income account for 1889 and 1890 and for nine months ending September 30, 1891, are given in the original bill, showing a surplus each period. By the cross-bill the income account

is given for the year ending December 31, 1891, and three months ending March 31, 1892. The first shows surplus earnings of $443,637.96, the latter excess of expenses over earnings of $80,109.09, or an average surplus of $363,528.87, although the operating expenses are stated in indefinite and general terms. By the amended bills it is alleged that the loss sustained by the commission tariffs to August 31, 1892, was $159,694.51, and that if said tariffs were in force the entire year they would entail a loss in revenue exceeding $300,000. These amended bills refer to and make part thereof the report of the receiver for the year ending June 30, 1892, attached thereto and called Exhibit "H" as showing "the operating expenses in detail." In order to arrive at the true condition of the company it is therefore necessary to consider this report in connection with the other allegations of the bills. The property of this company was placed in the hands of the receiver February 16, 1889. On January 1, 1889 (transcript 24), the company had earned a surplus of $2,612,118.68 after paying operating expenses, interest on bonds, and taxes to that date. On January 1, 1890 (page 26), the surplus income was then $3,262,300.25 after paying operating expenses and taxes to that date and fixed charges or interest to February 21, 1889. On January 1, 1891 (page 27), the surplus income was then $3,719,560.66 after paying operating expenses and taxes to date. On September 21, 1891 (page 26), the surplus income was $3,795,785.68 after payment of operating expenses and taxes. The fixed charges, or interest on bonds, were unpaid from February 21, 1889, to September 30, 1891, though the company had earned enough to pay it. On June 30, 1892 (page 313), the surplus was then $893,694.50 after paying all operating expenses and taxes and setting aside $2,940,855.38 for the purpose of paying all accrued interest on bonds to that date, $1,951,650.09 of which was actually paid (page 301). The semi-annual interest, due November 1, 1892,

amounted to $401,742.75, and it thus appears *that on June 30, 1892, the date of the last report, all operating expenses, taxes, and accrued interest had been paid or provided for, and there was still in the treasury of the receiver enough money to pay all interest due November 1, 1892, and leave on hand $491,950.75.* There was earned, therefore, in the language of Judge Brewer, revenue sufficient to pay "cost of service, interest on bonds, and then some dividend."

R. R. Co. *v.* Dey, 35 Fed. Rep., 879.

This excellent showing is made notwithstanding there was improperly deducted from income (above operating expenses, fixed charges and taxes) the sum of $478,601.92 as "other deductions" (page 313).

This report of the receiver, as has been stated, is for the year ending June 30, 1892. While it is attempted to show by the report that the income from operation for this period is not sufficient to pay expenses, interest, and taxes, it is done by charging to "operating expenses" $302,085.77 for "cost of road, equipment, and permanent improvements" (page 311.)

It is well known that operating expenses do not include any sums used for such purposes as this large amount was used. There are in this aggregate items for fences, grading, and bridge and culvert masonry, bridges and trestles, rails, buildings, furniture and fixtures, shop machinery and tools, sidings and yard extensions, locomotives, passenger cars, freight cars, and other cars of all classes. That none of these are for repairs or renewals is shown, not only by this account, but by the account of operating expenses proper (page 325). The sum of $50,412.40 is charged for indefinite "other items" (page 311).

It should not require argument or authority to show that these items of expenditure simply add to the value of the

property and were that much additional capital invested by the owners and form no part of operating expenses proper. The leading publication on this subject is entitled "Railway Disbursements," by Marshall M. Kirkman, treasurer of the Chicago and Northwestern Railway Company, and was doubtless prepared for the purpose of contributing to a uniform system of accounts by all railroads. The following extracts from that work will suffice to present the matter clearly:

SECTION 2. "The operating expenses proper embrace the current working expenses and the cost of keeping in good order the original plant of the company."

SECTION 356. "This heading (improvements) is intended to embrace the disbursements having for their object the betterment of the original plant of the company, where a portion of the charges for the account to be opened under it belong to operating expenses and a portion to construction."

SECTION 357. "For instance, suppose it be determined to replace the shingle roof on blank passenger station with slate roof. This would be improving the property, and the amount the slate roof cost in excess of what the shingle roof cost when it was new is a proper charge to construction."

SECTION 370. "The cost of all improvements that add value and increased stability to the property of the company over the original value are properly chargeable to construction."

It is also said (sections 423, 433) that the account for "equipment" embraces the cost of all additions to the rolling stock, and in its nature is similar to construction, and therefore should not be charged to operating expenses. It will be observed that this item of $302,085.77 (page 311) is by the report of the receiver placed under the two heads of "construction" and "equipment" and by no rule can be held properly chargeable to operating expenses.

In so far as this item affects it, the true state of the account for the year ending June 30, 1892, is as follows, the figures in parentheses indicating the page of the transcript:

Gross earnings from operation (pp. 313-317)		$3,568,690 26
Less operating expenses (pp. 313-327)		2,986,204 12
Income from operation (p. 313)		$582,486 14
To which should be added amounts expended for "cost of road, equipment, and permanent improvements," admitted to have been included in operating expenses (p. 311)		302,085 77
Dividends on (compress) stocks owned (pp. 313-319)		8,020 00
Total income		$892,591 91
Deductions from income.		
Interest on funded debt accrued during the year (pp. 301-313), viz:		
On $7,954,000 first-mortgage bonds at 6 %	$477,240 00	
On $7,054,000 second-mortgage bonds, one month, at 6 %	35,270 00	
On $7,054,000 second-mortgage bonds, eleven months, at 4½ %	290,977 50	
Total interest accrued	$803,487 50	
Rental paid Colorado River Bridge Company (pp. 313-329)	14,583 32	
Taxes (p. 313)	28,951 35	
Total deductions		$847,022 17
Surplus after paying operating expenses proper, interest accrued on bonds, taxes, &c.		$45,569 74

It is well and opportunely said by this Court that, "while the protection of vested rights of property is a supreme duty of the courts, it has not come to this, that the legislative power rests subservient to the discretion of any railroad corporation which may by exorbitant salaries or in some other improper way transfer its earnings into what it is pleased to call 'operating expenses.'"

R. R. Co. *v.* Wellman, 143 U. S., 346.

While it is thus shown that the most extreme views on this subject have been fully met, yet the attention of the Court is invited to the many and varying considerations

which the commission was authorized to look to as further establishing the reasonableness of the rates. Some of them have already been adverted to in discussing the character of the power and the measure of reasonable rates. It is also proper to suggest that before rates fixed by the commission are disturbed the just presumption of their fairness should be overthrown by allegations disclosing and negativing all material facts upon which it could lawfully have acted. These have not been shown. On the contrary, the complaint rests upon an unsound test of reasonable rates, to wit, operating expenses, fixed charges, and dividend. The facts constituting the true measure of such rates are not averred, much less that, tested by them, the rates fixed by the commission are unjust. Of other facts material for consideration here it may be said that it is not shown what the bonds cost, and without it the Court has no means of determining the question.

Dow *v.* Beidelman, 125 U. S., 690.

Between Longview and Fort Worth, a distance of only one hundred and fifty miles, there are five trunk lines which parallel each other across the State—the Santa Fé, the Houston and Texas Central, the International and Great Northern, the Cotton Belt, and the Missouri, Kansas, and Texas. Through much of this territory the Texas and Pacific is a competing line. May no note be taken of these competitive conditions by which the value of railway property is lessened and rates reduced?

R. R. Co. *v.* R. R. Co., 47 Fed. Rep., 27, per Brewer, justice.

R. R. Co. *v.* Florida, 25 Fla., 332.

From 1854 until 1882 the State pursued lavishly the policy of land donations to railway companies. During this time, as shown by the published executive documents, it donated to these companies 38,826,880 acres of land. This is more

than 22 per cent. of the total area of the State and comprises a territory larger than the eight States of Massachusetts, New Hampshire, Vermont, Connecticut, Rhode Island, Maryland, New Jersey, and Delaware. Individuals and municipalities pursued the same course, and the value of subsidies and donations from this source are beyond estimate or computation. The International and Great Northern Railroad Company received from the State 3,352,320 acres, or an area greater in territorial extent than either of the States of Rhode Island, Delaware, or Connecticut, and exemption of all its property from taxation for twenty-five years.

I. & G. N. R. R. Co. *v.* Anderson Co., 59 Texas, 654.

It is strongly intimated by the supreme court of Florida that such donations and exemptions should have weight in determining the reasonableness of rates.

R. R. Co. *v.* State, 25 Fla., 336, 337.

Since 1891 financial depression has pervaded every avenue of trade. Shall all other owners of property suffer except these? We have seen that railway experts as well as commissioners say that rates must be established with reference to the "market value of the commodity and its gradual reduction." The chief products of the State of Texas are cotton, grain, cattle, lumber, and wool. The principal rates established by the commission were on these, and it is of this action that the corporation complains. The report of the commissioner of agriculture of Texas for 1890 and 1891, to which the Court may look, as in the case of the census, shows a remarkable reduction in the value of each of these products in 1891, when the commission acted, as compared with 1890. The price of cotton fell from 10½ to 8 cents per pound, cattle from $6.03 to $5.73 per head, corn from 67 to 45 cents per pushel, wheat from 84 to 75 cents

per bushel, and wool from 18 to 17 cents per pound. There is no report as to lumber. Although production increased enormously there was an actual decrease in values in 1891 of $4,426,306 and a proportionate decrease of $35,552,239.17, or 23 per cent., as shown by the following table:

Statement.

Number of bales of cotton produced in Texas in 1890	1,692,830	
Number of pounds	701,531,180	
Average price per pound	10¼c.	
Total valuation		$71,631,282 00
Number of bales of cotton produced in 1891	2,026,774	
Number of pounds	867,593,425	
Average price per pound	8c.	
Total valuation		69,439,476 00
Number of cattle raised in 1890	7,584,097	
Average value per head	$6 03	
Total value		45,732,689 00
Number of cattle raised in 1891	6,856,338	
Average value per head	$5 73	
Total value		39,304,248 00
Bushels of corn raised in 1890	41,812,904	
Average price per bushel	67.8c.	
Total value		28,365,322 00
Bushels of corn raised in 1891	63,135,004	
Average price per bushel	45c.	
Total value		28,429,125 00
Bushels of wheat raised in 1890	2,365,525	
Average price per bushel	84c.	
Total value		1,989,207 00
Bushels of wheat raised in 1891	6,578,305	
Average price per bushel	75c.	
Total value		5,244,303 00
Pounds of wool clipped in 1890	13,531,196	
Average price per pound	18.23c.	
Total value		2,466,625 00
Pounds of wool clipped in 1891	15,409,979	
Average price per pound	17.69c.	
Total value		2,741,675 00

Total value of all products for 1890	$149,585,135 00
Total value of all products for 1891	145,158,829 00
Actual decrease in values	$4,426,306 00
Total value of cotton raised in 1891, at 10¼ cents, the average price per pound in 1890	$87,884,334 26
Total value of cattle raised in 1891, at $6.03 per head, the average price in 1890	41,333,778 84
Total value of corn raised in 1891, at 67.8 cents, the average price per bushel in 1890	42,805,532 71
Total value of wheat raised in 1891, at 84 cents, the average price per bushel in 1890	5,861,776 20
Total value of wool clipped in 1891, at 18.23 cents, the average price per pound in 1890	2,825,646 17
Total value of all products for 1891, at prices received in 1890	180,711,068 17
Total value of all products for 1891, at prices actually received	145,158,829 00
Proportionate decrease in values, considering both increase of production and decrease of price	35,552,239 17
Percentage of average increase in all products for 1891	19⅔%
Percentage of proportionate decrease in values for 1891	23%

The reduction in the value of most of these products for the year 1892, as compared with 1891, is equally notable. The price of cotton fell from 8 to $6\frac{6}{16}$ cents per pound, corn from 45 to $36\frac{1}{2}$ cents per bushel, wheat from 75 to $55\frac{1}{4}$ cents per bushel, wool from 17 to $15\frac{1}{2}$ cents per pound. The price of cattle was practically the same for these years. The prices for the year 1893 are not yet accessible.

With these facts, in connection with the actual compensatory earnings of the company, the rates are unquestionably just and reasonable.

Dow *v.* Beidelman, 125 U. S., 681.

Railroad Company *v.* Dey, 38 Fed. Rep., 656.

In this case, moreover, no stronger rule can be urged by the companies than that "where a tariff of freight and passenger rates has been established by the railroad commis-

sioners and the railroad company and the commissioners differ as to whether such rates, considered as a whole, will prove remunerative to the company, and there is room for a difference of intelligent opinion on the question, the courts cannot interfere or substitute their judgment for that of the commissioners, but the tariffs as fixed by the commissioners must, in so far as the courts are concerned, be left to the test of experience."

R. R. Co. *v.* State, 25 Fla., 310.
Storrs *v.* R. R. Co., 29 Fla., 631.
R. R. Co. *v.* Dey, 35 Fed. Rep., 878.
Tilley *v.* R. R. Co., 5 Fed. Rep., 654.

It is submitted that the cause should be reversed, with direction to dismiss the bills.

CHARLES A. CULBERSON,
Attorney General of Texas.